Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

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[*Latin ed. p. 1*]

A COMPENDIUM, CONVENIENTLY ARRANGED AND ILLUSTRATED, PREPARED WITH DILIGENCE AND CARE BY VICTOR PIAZZESI, DOCTOR OF BOTH LAWS.

Acts, legal and more solemn, emanating directly from the Supreme Roman Pontiff: these acts, among those which can be made public under the law, whether they are Decrees, Instructions, Responses, or other similar matters; especially, expositions and resolutions of cases from the Sacred Congregations, by various Cardinals, contributing to the accurate understanding and observance of ecclesiastical law, carefully compiled in a compendium; and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of the existing law: for the benefit of those who diligently seek to understand the laws of the Church, and who labor diligently in the governance of the Christian flock, or in the cultivation of the Lord's vineyard.

Volume XXXII.

ROME, FROM THE PRINTING PRESS OF S. POLYGLOTTA, CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1899-1900.

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[*Latin ed. p. 3*]

From the Congregation of the Holy Council of Ministers, January 28, 1899. Through summary petitions, at the Plenary Assemblies of June 1, 1898, this question was presented under the following formula of doubt: "Are chaplains obligated in their office to minister, as a deacon and subdeacon, at the canonical weekly celebration of the functions called 'of the Dying and the Good Death,' in the aforementioned case?" And the following response was issued: "At the prudent judgment of the Bishop." However, the Bishop, in letters of August 14, 1898, again requested the Most Reverend Fathers to consider whether it would be permissible to issue a decree resolving the question, which he felt he was not authorized to do, lest it gravely offend chaplains or canons (1). Chaplains presented certain testimonies, to demonstrate that the disputed functions were in no way choral, and that if they were ordered to perform them, they would suffer a very serious loss; and that to prescribe such a thing would be a new,

unheard-of, and almost useless innovation. With these considerations in mind, it was asked what response should be given to the petitions. RESOLUTION. The Holy Congregation, after deliberation on January 28, 1899, decided to respond to the proposed doubt: "Are chaplains obligated in their office to minister, as a deacon and subdeacon, at the canonical weekly celebration of the functions called 'of the Dying and the Good Death,' in the aforementioned case? Negative." SUMMARY OF THE MATTER. (i) This question was reported in Volume XXXI, page 178.

[*Latin ed. p. 4*]

4 FROM THE DECREES OF THE HOLY GENERAL COUNCIL OF TRENT, January 28, 1899, Session 24, chapter 12, concerning reforms. SUMMARY OF THE CASE. In the diocese of Trent, the Collegiate Church dedicated to Saint Nicholas, which included a number of priests in its chapter, though the exact number is uncertain, was distinguished by its antiquity and its endowments, but had, in our time, been brought almost to ruin; indeed, its assets were seized by the government in the year 1867. However, due to canonical provisions and the necessities of the Church, some assets remained, namely, revenues assigned as pensions to the canons then attached to the Church, as long as they lived; and lands granted to the parish priest as legitimate compensation for his pastoral duties. In a general distribution of assets, it happened that, when the parish priest was the sole survivor, he received a larger portion of the assets than he had previously possessed. This gave rise to a question among the canons, as to whether it was permissible for the parish priest to use his improved fortune, at his own discretion and without the authority of the government or the chapter, for the benefit of the chapter's assets. This Holy Congregation addressed this question, replying on December 18, 1884, that the Holy Council of Trent had decreed that, as is mandated by the present decree, until otherwise determined, the canonical portion of the parish priest should be included in the common fund, but that, nevertheless, the parish priest should be paid annually a portion not less than the amount he had previously received before the seizure of the assets. A new difficulty arose from the custom of adding new canons, who, having received nothing from the government, either as a stipend or as a pension, claimed certain revenues from the assets belonging to the parish benefice, which were included in the common fund, according to the aforementioned decree; but they inquired whether canons receiving a pension from the government should also receive the same portion from the common fund that they themselves received.

[*Latin ed. p. 5*]

ANDRIEN. To settle the matter, the Sacred Congregation of Cardinals, interpreters of the Council of Trent, on May 8, 1880, after maturely consider-

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ing the arguments presented by the canons, both ancient and recent, of the Collegiate Church of St. Nicholas, regarding the controversy concerning the division of revenues exceeding the parochial quota due to the parish priest: and having attentively examined the letters repeatedly sent on this matter by Your Eminence, decided to issue the following decree: "The portion of revenues from masses offered to legates is to be divided equally among all the canons, with the corresponding burden of masses. From the remaining portion of revenues, a distribution mass is first to be established, together with the portions that are contributed to it by the canons who preside over the administration of goods, with the recent canons bearing the burden of conventual and votive masses in a proportion to be determined by the Bishop. After the distribution mass has been established, if anything remains, it is to be divided equally among all the canons, and allocated to each according to place and need." Based on this decree, two masses were established, one for masses, and the other for distribution, or the choral mass. Regarding the method of establishing these masses, the Sacred Congregation, by decree of March 5, 1887, approved that the revenues exceeding the appropriate parochial amount should be divided into five parts, of which three should be assigned to the choral mass; the remaining two to the mass of masses, for the purpose of celebrating more masses, with a fixed stipend of 5 florins for each mass. Since all canons, both those recognized by the administration and those without such recognition, were to participate equally in the choral mass, it was established that the ancient canons recognized by the administration, or pensioners, should contribute to the choral mass the same portion of their revenues as the other canons, who were considered to contribute to the same mass. It was considered that these revenues did not belong to the parish priest.

[*Latin ed. p. 6*]

6. From the deliberations of the Sacred Congregation, it was determined that the canonical revenues, both those subject to pensions and those not, should be assigned in proportion to the total amount of lib. 206, which were destined for the choral Mass. With these revenues assigned in this manner and by this law, it was stipulated by a decree of May 5, 1880, that if any revenues remained, these should also be divided equally among all the canons, (both those receiving pensions and those not), according to their rank and office. The chapter officials, having arranged their affairs in this way, in order to prevent the condition of the canons from worsening in the future if other canons were co-opted, in addition to the choral Mass, protested that only ten canons should participate in this Mass, both now and in the future; and the Sacred Congregation of Rites, under the date of March 14, 1890, deemed it advisable to respond: "It is left to the prudent judgment of the Bishop, with all the necessary and appropriate means, to determine and decide whatever he judges to be more pleasing to the

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Lord." The Bishop, by virtue of this response, decreed on May 14, 1890: "Using the same Apostolic faculties, we decree that... only ten canons who do not receive a pension from the chapter shall participate in the choral Mass, as mentioned above, which is composed of the revenue exceeding the portion of the parish priest, while maintaining the division of the Mass stipends, according to the form of the most recent response of the Sacred Congregation of Rites, dated March 5, 1887; and this shall be valid under the present conditions, arising from the confiscation of the chapter's goods." At the beginning of the year 1892, the priest Michael, a canon of the Sacred Congregation of Rites, petitioned that he be granted the faculty to enter the chapter of Saint Nicholas. Then the Sacred Congregation of Rites referred the request to the Ordinary for information and opinion, and after hearing the chapter, which responded on February 6, 1892, in this manner: "It does not oppose, provided that the newly appointed canon enjoys only the Mass assigned to him, and not the distribution of the choral Masses." Nevertheless, today, five canons, who are subject to this law,

[*Latin ed. p. 7*]

ANDRIEN. 7. Those attached to the choral mass do not profit, and raise a question, principally on the grounds of equity, concerning the Bishop's decree of May 14, 1890, and therefore, these doubts have been raised: I. Whether and how five canons should be admitted to participation in the choral mass in this case; and, if affirmative, II. How provision should be made regarding the past concerning the participations missed by the five canons in this case. Then they raise another question, to which the opposing canons object, just as they did to the other petition, and this question is contained in the following doubt: III. Whether the five canons should be admitted to the celebration of conventual Masses, with a suitable stipend in this case.

SYNOPTIC DISCUSSION

DEFENSE OF THE CANONS. The advocate of these canons believes that the case has already been decided, if one recalls the condition to which the opposing canons subjected themselves when accepting the canonry, namely: that only ten canons, not drawing a pension from the governing authority, should participate in the choral mass. Therefore, the advocate invokes well-known rules of law, namely: "What has once pleased, cannot afterwards displease"; and, "No one can change his mind to the detriment of another"; and the famous saying from chapter 1 of *De pactis*: "Let peace be kept, let agreements be observed." Then, the Instruction of the Sacred Congregation of Councils, issued in 1876 and sent to the Bishops, is considered, in which, among other proposals and resolved doubts, the following are found: II. Whether and how those (who have received Episco-

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pal or Apostolic letters for some canonry or benefit of the cathedral church beyond the number claimed by civil law) should enjoy active and passive voice? — Answer: Affirmative, unless it is a matter of the administration of goods. III. Whether and how they should participate in the revenues of the common mass, or rather, in the revenues only which are assigned by the capitular statutes, or by the treasury, for distributions.

[*Latin ed. p. 8*]

8. From the daily sessions, or from among those present? — Response: "Negatively to the first part, affirmatively to the second." Q. And whether, and in what manner, those who, after a supposed suppression of the collegiate chapter or clergy, are received by letters from the Bishop or from the Apostolic See, ought to participate in the revenues, which, under the title of a vital pension, are paid individually to the present chapter members or participants by the Treasury? — Response: "Generally speaking, negatively, but particular cases must be considered." However, the speaker continues, in this case, there are no revenues which have been assigned either by the chapter statutes or by the Treasury for distributions, whether daily or among those present, because the Treasury itself has appropriated the chapter's assets, and nothing remains except that thin common fund, composed of the revenue exceeding the portion of the parish priest. Therefore, with the best of right, and in accordance with the aforementioned Instruction, it was stipulated in the aforementioned Bishop's decree that only ten canons, who already held a benefice, should participate in the aforementioned choral fund. Then, the advocate argued that the Holy Congregation of the Council, in the case of Tropeen, in the year 1883, had given a judgment entirely in accordance with the intentions of his clients; for it concerned a case not dissimilar from the present question. Indeed, the chapter of the Church of Tropeen consisted of 24 canons, who, in addition to separate and distinct endowments, enjoyed a common distribution, which was to be allocated to the benefit of those canons who served the choir more diligently. But in those unfortunate times, the civil government reduced their number to twelve, while nevertheless preserving the common fund for distribution, although subject to the law of conversion. — Then, the Reverend Auxiliary Bishop of Tropeen decided to establish two canonries with his own funds, with the consent of the chapter, with the addition of the clause "reserving the rights and emoluments, and every other reason of entitlement, of the Reverend Chapter." However, the Bishop wished to confer one of these canonries upon the priest Gregory Ruffa, and the other upon the priest Anthony Tocco. — Therefore, they were admitted to—

[*Latin ed. p. 9*]

ANDRIEN. The nine newly appointed canons desired to enjoy the same rights as the other canons, particularly concerning the distribution of the

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Mass, and the stall and voice in the Chapter, according to the rights of other canons. However, the Chapter opposed this, asserting "that, due to the reservation made in the capitular act, the two new canons do not possess all the rights of canons." Consequently, this question was presented at the General Chapters of the Sacred Congregation of the Council under the following doubts: I. Do the canons of the second foundation enjoy all the rights and emoluments of the other canons in this case? II. Must these canons enjoy the same precedence concerning the stall as the other canons in this case? III. Do these canons have the right to participate in the capitular sessions in this case? To these questions, the Most Reverend Fathers responded on January 20, 1883: Regarding the first, concerning the daily distributions, affirmatively, insofar as and to the extent that they contribute to the common Mass distribution; concerning emoluments derived from dispositions made by the Chapter before the erection of the new canons, negatively; concerning the remaining emoluments, affirmatively. Regarding the second, negatively. Regarding the third, affirmatively in all respects, except those concerning the interests and particular rights of the older canons. Therefore, it is concluded that the opposing canons have no other right than that of participating in the Mass, in general, for which two-fifths of the revenues are assigned, which remain after the parish dues; the remaining three-fifths constitute the choral fund, which is reserved exclusively to ten canons, along with the older ones. Furthermore, the advocate argues that the celebration of conventual Masses strictly pertains to the choral service, and that the common Mass is designated as compensation for this service; therefore, it necessarily follows that nothing can belong to these additional canons.

[*Latin ed. p. 10*]

10 FROM THE HOLY GENERAL COUNCIL. These supernumerary canons are nothing other than an expectation of future benefits, the advocate says, since they were expressly received in the Chapter in Aversa. Nor can this temporary exclusion from participation in the common Mass be considered unjust, the advocate notes, because even the resident canons of the same collegiate church supported the choir before the confiscation of goods, and yet they received nothing other than a portion of the Mass offerings. Likewise, coadjutors, even in this esteemed city, also bear the burden of the choir, and yet they receive nothing or very little from the emoluments, but are sustained only by the hope that they will one day succeed to a benefice. But the canons of Aversa, the advocate observes, not only have this certain hope of succeeding, and participate in the Mass offerings, but also enjoy another benefit, which is denied to many other priests in the same city, namely, not only the right to wear the canonical insignia in the choir, but also to wear outside and everywhere a ring with a precious stone, in the manner of Bishops, a galero, commonly called

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a "cordon," of violet color, a collar, and stockings (calze), of the same color; which, in the common estimation of that region, is a considerable acquisition of honor.

DEFENSE OF THE SUPERNUMERARY CANONS. The advocate, appointed by the opposing side, first points out that the Bishop certainly had the power to establish the decree, but that two things are required to ensure that the decree is not corrupted, namely, that the authority was properly obtained, with an explanation of the circumstances of the case; and that the Bishop used this authority with prudence and equity. The advocate argues that the Bishop has not sufficiently considered equity, and asks what the constitution of the Church of St. Nicholas is. It is said that this church is still adorned with twenty-five canons, as in ancient times. Although they do not possess any benefices (since the church is endowed annually for the reception of guests), they are usually appointed by the Bishop, or by the Pope, by decree, or, as they say, by bulls, in accordance with the law, as was prescribed by the Pontifical Constitution for such churches in Sicily (Brief of Pope Pius VII, Impensa, an-).

[*Latin ed. p. 11*]

ANDRIEN. (died 1819). With the exception of three offices, there is absolutely no distinction among the canons: but all have equal duties, and equal rights: nor was there any different assignment of rewards before our time. For the revenues from the Church's constitution were distributed individually, without any distinction. The unjust seizure of the Church could not change either the offices or the rights, but it deprived the Chapter almost entirely of its patrimony, unexpectedly: for it escaped no other loss than that which the Church's prelate had claimed for himself, since he was performing the parochial office. Consequently, by decree of the Sacred Congregation of Councils, a certain sum was assigned to the prelate: and that which remained, after this deduction, was divided among all. Thus, there are now three classes of canons, which will soon be reduced to two. These classes have equal duties: for all the canons participate in the choir, and perform their duties. They also have equal rights: since all are called to assemblies and enjoy the right to vote. But the reward for labor is very different. The first class consists of those canons who were co-opted by the Chapter before the seizure; who, what they previously demanded from the Chapter, now receive from the treasury (commonly called a pension): and they have incurred no loss, except perhaps from taxes. The second class consists of ten canons, who divide among themselves the mass, which is called the choral mass, and who participate in the Masses. The third class consists of five canons, to whom, as well as to the other canons, a portion is given from the Masses only. This portion, which is obtained by the five canons, amounts to eighty livres; therefore, the patron notes, these ten canons, to whom their Bishop has granted a decree, acquire almost three

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hundred and fifty livres per year, if they participate in the choir; but only one hundred and thirty-nine, if they neglect their duties, or entirely. But what these canons claim for themselves, even while idle, neither the five actor canons can obtain, either now or in the future. Therefore, the advocate concludes, the Bishop's decree is flawed, because it certainly lacked the first requirement given in the decrees of the Sacred Congregation, namely, genuine truth. And the patron fabricates two arguments: either the Sacred Congregation did not sufficiently understand the intention of the Chapter, or...

[*Latin ed. p. 12*]

12. EX S. G. CONCILIO hoc vellet alios creare canonicos praeter decem. Et hunc errorem obrepsisse, ait advocatus, persuadet primum responsum redditum; nimirum: « satis provisum si Episcopus ad mentem decreti S. C. C. die 22 Fel. 1876 in posterum litteras collativae vel commendatitias nemini tradat inconsulta S. Congregatione ». Nam haec responsio non satisfacit intentioni decem canonicorum, qui non quaerebant de numero fratrum, sed de exclusiva participatione massae choralis. Vel secundo loco fingi potest, notat patronus, S. C. O. nec a longe suspicari potuisse, tam pauperem fuisse mercedem aliis canonicis tribuendam, qui omnia onera sustinent canonicalia, praeter mercedem. Praeterea, advertit patronus, etiam alterum deest requisitum pro valore decreti, ne scilicet Episcopus facultate sibi concessa sit abusus. Iamvero in themate Episcopi executor erat voluntarius; sed executor voluntarius locum habet in hypothesi gratiae non factae, sed faciendae ab ipso executore rescripti. Formula commissionis huius regulariter est « cognita veritate precum, si expedire tibi visum fuerit » vel similia. Hoc in casu executor non solum debet cognoscere de precum veritate, sed etiam de valore causae pro gratia concedenda: executor enim hoc in casu est qui proprie, auctoritate quidem sibi commissa, gratiam facit. Gratia est ergo effectus rationabilis iudicii ipsius executoris. (Santi, prael. iur. can. vol. I, tit. III, § 31). At aliter se Andriensem Episcopum gessisse, urget patronus, et hoc patet si ea recolantur, quae de reditus partitione supra explicata sunt. Nam ex canonicis plus viginti, qui idem onus in Ecclesia suscipiunt; sunt decem, qui totam habent mercedem; alii vero sine mercede laborant. Sed contendit procurator, decretum Episcopi maximam continere iniquitatem, quia vera non est illa canonicorum assertio: redditus nempe ita esse diminutos, ut satis non sint pro constituendis distributionibus choralibus, quia non pertingunt summam libellarum 206. Nam, ait patronus,

[*Latin ed. p. 13*]

ADRIEN. Massam choralem numquam habuisse minoris summam librorum trium milium, unde abunde pro decem canonicis suppetebat, biscentum sex libellis destinandis in distributiones. Immo, ex libellis biscen-

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tum sex, a decem canonicis solutis causa distributionum, summa conflatur librorum duarum milium et sexaginta (2060); unde reliquae erant ex integra summa trium milium librorum, pene mille libellae (940), quae eisdem distribuerentur viris tim ratione praebendae. Sed quod verum haud erat initio, hodie longius abhorret a veritate, urget patronus. Nam reditus adeo augent in dies, ut anno superiore, fere septem libellarum milibus Capitulum sit petitum. Nunc itaque quattuor millia libellarum ducenta in choralem massam invefcuntur, nempe tres quintae partes; ex quibus, si detrahatis biscentum sex, decem canonicis pro distributionibus adiudicatas, non modo mille, ut antea, libellarum, sed duo millia centum quadraginta vel minus paulo superare patet. Quae profecto haud in omnes dividuntur: sed in omnes, quinque canonicis actoribus exclusis. Nec satis: mox enim canonicis, ante bona direpta promotis, tributum, quod hactenus effugerant, ut dictitant, a fisco indicetur. Inde fiet, ut extenuatis eorum pensionibus, pars in distributiones eroganda ad libellas centum nonaginta redigatur. Tunc haud amplius libellas biscentum sex, sed centum nonaginta, decem canonicis ad praescripta decr. diei 8 Maii 1880 pro distributionibus impertiri opus erit; quum decem canonici in distributiones tantumdem impendere debeant, quantum in easdem conferunt canonici pensionem a gubernio recipientes. Tunc duo millia libellarum et ter centum supererant in singulos dividenda, ratione praebendae, exceptis tamen canonicis modo querelam moventibus. Quoad acceptationem vero factam a canonicis actoribus in actu concursus, omnium conditionum Episcopi decreto statutarum, notat procurator, nihil faciendam esse, quippe vel errore, vel metu extortam, vel aliunde nullam, ob nullitatem nempe decreti episcopalis.

[*Latin ed. p. 14*]

IV. CONCERNING THE GENERAL COUNCIL: Regarding the second question, or concerning the celebration of conventual Masses, it is first noted that canons are, by our law, bound by turns to celebrate these Masses (constitution *Cum semper oblatas*, Pope Benedict XIV), so that no one is permitted, for any reason whatsoever, to abstain from this duty. Regarding this matter, a decree was issued which freed some canons from this duty (Albinganen, April 27, 1844). Furthermore, it is mandated that the Dean of the Chapter should not be excused from this duty in his place (Squillacen, March 17, 1739; Tolentino, May 26, 1714; book 64 of decrees). It is certain, the speaker insists, that a salary is due to those from the Chapter who celebrate these Masses. For this has been judged very often, and the precept is that, if the revenue were not available for this salary, the salary itself should be deducted from the distributions. Indeed, this is how the matter was resolved in the following question or doubt: "Are the Vicars of the Cathedral Church of Monasteriensis obligated to offer a conventual Mass gratuitously for benefactors, or rather, must the Chapter pay a stipend to them for this offering in such a case?" The response was: "Negatively

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to the first part, affirmatively to the second; that the Mass should be provided with prudent judgment by a contribution from the revenues of all offerings." (Monasterien, January 10, 1846; Paderbornen, January 24, 1864). And Pope Benedict XIV, in the constitution *Cum semper oblatas*, cautioned: "There was also an exception for other churches, that the conventual Mass is not always celebrated by canons or dignitaries, but sometimes also by benefactors or laymen, which seems less equitable; for it is not fitting that the celebration of Mass should be entirely without alms, and it is unknown from where these alms can be obtained; however, this matter should be carefully considered, so that they may be taken from the Mass distributions." With these points noted, the following questions are to be considered: I. Whether and how five canons should be admitted to participate in the choral Mass in such a case.

[*Latin ed. p. 15*]

ANDRIEN. 15 And concerning what is affirmed, Section II. Whether and how provision should be made for the past time with regard to participations missed by five canons in this case. III. Whether the five canons should be admitted to the celebration of conventual Masses with a suitable stipend in this case. RESOLUTION. The Holy Office, after deliberation on January 28, 1899, decided to respond: To the first, negatively; to the second, as provided in the first; to the third, negatively. BAIONEN. MARRIAGE INDULGENCE. March 18, 1899. Session 24. Chapter 5, concerning marriage dispensations. In the year 1895, on June 4th, Maria, according to the form of the Council of Trent, was joined in marriage by the advocate Paul, in the parish church of the town commonly called Moissac. After the wedding ceremonies, the spouses, as is customary, embarked on a pleasure trip, first to Burdigala, and then to Lutetia Parisiorum. However, this marriage, which both parties entered into with willing hearts, did not have a happy outcome. For, from the very first night of the marriage, the spouses used the marital bed; but, either due to the wife's defect, as the husband swore before a lay judge, or, according to the wife's testimony, due to the husband's impotence, it appears that the marriage was not consummated. Within twenty days, the spouses, having completed their journey, returned to Mussiacum and stayed with the wife's mother. But less than a week later, disagreements arose between them, and the husband said goodbye to his wife, stating that he would not return. Indeed, he brought his wife before the civil court, requesting a divorce decree, which was granted in favor of both spouses. • SUMMARY OF THE FACTS.

[*Latin ed. p. 16*]

16. FROM THE HOLY GENERAL COUNCIL. Then Mary, urged by her parents, went to the Supreme Pontiff, imploring him to grant her a dispensation concerning a marriage that had been consummated and not con-

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summated. As was customary, her petition was sent to the Ordinary of Bayonne, so that he might conduct the proceedings concerning both the lack of consummation and the reasons for a dispensation. Indeed, the Bayonne court, having established a tribunal, heard Mary, and examined seven witnesses, among whom were some who had been summoned by order of the court, and the woman was subjected to a physical examination of her virginity, first by three midwives, and then by physicians. The man was also summoned three times, but he refused to obey the order of the judge. After all these things had been completed, the Judge of Bayonne sent the proceedings to the Holy See, and noted the following: "If it were permitted to express my opinion on this delicate matter, which has been the subject of my investigation, I would venture to declare that, in my opinion, the lack of consummation of the marriage is not doubtful." Synopsis of the argument. The first argument in favor of the lack of consummation of the marriage was drawn by the advocate from the sworn testimony of the woman; for she said: "In fact, the marriage has not been consummated: he himself, after two or three unsuccessful attempts, confessed to me each time that he was unable to do so at that moment. Before the first time, he explained to me clearly how the marriage was consummated: something that I did not know until then. I understood perfectly what he was telling me, and I submitted without any resistance to what was necessary for the consummation. I clearly perceived that the genital organ of my husband was experiencing excitement: but nevertheless, he did not have the strength to penetrate me: and then he said to me each time, without further explanation: 'I cannot at this moment.' Recalling these circumstances, I am absolutely certain that I have not been penetrated." The woman affirmed the same thing to the lay judge, before whom she was being sued by the man. DEFENSE OF THE WOMAN.

[*Latin ed. p. 17*]

BAIONEN. 17 "To that sworn assertion," he says, "absolute credence must be given; for it concerns a young woman, imbued with the best morals and most religious, whose praises all the witnesses extol to the heavens, and what she asserted before the Judge, they believe without the slightest doubt. And it is not to be feared that the actress has imputed falsehoods to the Sacred Congregation, because she hopes that the dissolution of the marriage will be beneficial to her. Indeed, the advocate notes, Mary does not intend to enter into other marriages, once these are dissolved, since she, now burdened by grave evils, expects a favorable response from God, so that she may devote herself to Him: 'I repeat that my principal aim in requesting the dispensation from my marriage is to enter into religion. Even before the marriage, I had certain inclinations towards the religious life. These inclinations have only grown stronger and have dominated in my heart.' Furthermore, the advocate adds, that what Mary now affirms before

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the Judge concerning the lack of consummation of the marriage, she affirmed the day after the wedding, and frequently during the time they lived together, at a time certainly not suspected, in a letter to her mother. And if it were objected that Mary, in her deposition, seems to express some doubt about the lack of consummation of the marriage, when she says: 'I believe that the marriage has not been consummated,' the advocate responds that these words do not invalidate the actress's testimony concerning the lack of consummation. For, immediately after this detected doubt, she more strongly denied having lived with the man as a wife. Moreover, the advocate proves the same from the very confession of the man, who, although contumacious in the ecclesiastical tribunal, expressly affirmed before the lay judge that he had not lived with his wife: 'I affirm that throughout the duration of our common life, my wife constantly refused, with repugnance, the fulfillment of the conjugal duty.' But it is not permissible to suspect Paul, who confesses the lack of consummation of the marriage, says the advocate, first, because he himself, at a time not suspected, affirmed the same, and second, because he has betrayed the truth for his own ruin. Truly, Paul, after failed attempts at intercourse, disheartened and dejected, Tom. XXXII. fase. GCCLXXIII. 2

[*Latin ed. p. 18*]

18 "Ex decreto Concilii Tridentini," inquit, "Maria dicebat: 'Ab Bordeaux, clamabat: "Est vanum; totus mundus ad hoc tendit, et ego non potero."'" Et in epistola quam Maria ad matrem suam scripsit, quae cum sponsis iter ad matrimonium faciebant, legitur: "Paulus mihi dicebat his diebus, quod cum ad Moissac redibo, poteram florem aurantii portare sicut quilibet puella." Verum est, ait orator, vir illud iuravit, cum hic, a uxore accusatus quod propter impotentiam suam matrimonium non consummasset, coram iudice omni opere contendebat, ut uxorem mendacio convinceret. Hinc, si uxori coiecerat, ut veritatem profereret, utilitas sua aliquatenus patebat. Nec dicendum est, Paulum inconsummationem matrimonii illius temporis simulasse, ut citius, ea uxori imputata, divortium persequeretur. Nam, respondet orator, illud leges Galliae permittunt, ut quolibet, vel minimi, causa repudium remitti possit. Quare, iuxta oratorem, ortum cum uxore dissidium, ut Pauli voti compos fieret, divortium petere satis erat. Et verum est quod Mariae obieciebatur, id iudex laicus non perspexit, et ob orta tantum dissidia divortium decrevit. "Gradum faciens," patronus ad argumentum ex virginitatis exploratione deductum, notat quomodo in physico examine ad unguem omnia mandata Concilii Tridentini servata sunt. Attamen, quod obstetrices et medici, cognitores de virginitate Mariae, opinabantur: "Constat mihi," inquit Maria Mollard, "membrana hymenis valde dilatari; sed non est destructa: nullae sunt carunculae myrtiformes." Et Maria Mailhac: "Orificium est irregulare et praebet in uno eius bordis incisuram, quae pro ruptura accipi posset, si non esset

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absentia completa caruncularum myrtiformium, quae consequentia sunt relationum conjugalium. Constat mihi rem hanc ad oculos, et praesertim ad tactum. Membrana hymenis exsistit. Convinxi me non fuisse relationes."

[*Latin ed. p. 19*]

BAYONNE. 19. The aforementioned doctor Doutournier affirms this, and likewise the expert Paul Gara testifies to the same. However, it is objected that one midwife differed in her judgment from others, and that the doctors discovered certain lacerations in Mary. But, the advocate points out, the midwife Mary Seylan gave negative testimony, and she was content only to confess her own ignorance. Furthermore, the advocate argues, if the doctors discovered lacerations, they testified that they admitted of no suspicion of coitus. However, he continues, complete faith must be given to those skilled in the art; thus, Gratian (Discip. for. cap. 572, n. 48) states: "One must adhere to the testimony of experts, and according to their judgment, even if the parties contradict, the judge must render his judgment." And even more so, the advocate affirms, because the lacerations, which the doctors discovered through examination, were caused by nature, since no expert observers found any scar. Indeed, it is well known that, once the hymen is torn, a scar can never disappear with the passage of time. "The healing," says Maschka (med. leg. carati, verg. vol. 3. p. 132), "does not always lead to a complete restoration, but according to the size and extent of the laceration, it leaves a breach or an indentation, the margins of which, as a result of the healing process, become firmer and more resistant over time than the remaining hymen." Therefore, since the doctors did not find a scar, the advocate concludes, it is not true that there were lacerations, but rather that nature itself tore the hymen. "The hymen can present small congenital indentations, the knowledge of which is necessary to avoid confusing them with the consequences of defloration." Furthermore, the advocate proves the non-consummation of the marriage through the testimony of most esteemed witnesses, who testify that they heard, at a time when there was no suspicion, that the marriage had not been consummated due to the fault of the husband. With these points established, he presents some letters which the actress sent to her mother during her marriage.

[*Latin ed. p. 20*]

20. During the proceedings of the Sacred Council. These documents are of the utmost importance, the advocate asserts, because they were presented at a time when there was no suspicion whatsoever, namely, when the spouses were not at all considering the dissolution of the marriage. Indeed, the advocate recounts that, having left Moissac, the spouses arrived in Bordeaux on the very day of their wedding, and remained there for four days. These days, during which the spouses did

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not cohabit, are demonstrated by two letters that the actress sent to her mother. — (Bordeaux, June 5, 1895). "I now understand that I am not yet truly married; this first night has taught me nothing." — (June 10, 1895). "I would very much like to see you at this moment to ask you for advice on certain things that I cannot write to you. Paul has been telling me these days that, when I return to Moissac, I will be able to wear my orange blossom as well as any young girl, and he explained to me, while asking for my consent, which I gave with eagerness: he told me that it was to spare me fatigue during the journey." Furthermore, other letters clearly demonstrate that the spouses, while staying in Paris for fifteen days, did not consummate the marriage. — (Paris, June 12, 1895). "You tell me, dear mother, that I must obey my husband: I understand this well and have never thought of opposing anything that he might require of me: and despite any repugnance that I might have felt for it, I would have consented, if he himself had not proposed that we wait until the end of our journey." She wrote the same thing to her mother in the following days (June 12 and 21), while staying in Paris: "For one thing or another, we have not yet been able to do what you know: Paul seems not to know very well how to go about it: nor do I, and we are quite embarrassed: I wonder how those who do it manage on the first night of their wedding." If the spouses did not cohabit during their journey, it is clear that they did not cohabit in their homeland either. The defender recounts that Paul stayed with his wife for about four days at his mother-in-law's house in Moissac.

[*Latin ed. p. 21*]

BAIONEN. 21. Soon after, Mussiaco abruptly departed and went to Tolosa; and he never returned to his wife. Mary, having approached her husband and being repulsed by him, denounced his unheard-of inhumanity in a letter. In this letter also, Mary affirmed the unconsummation of the marriage. "(Moissac, July 3rd). The following morning, I proposed to you what should have taken place between us a long time ago (and, as you know very well, I never refused it to you, not even the first night, I swear it to God). You refused with a certain brusqueness of tone that deeply wounded me." These words, according to the advocate, sufficiently and abundantly demonstrate that the marriage was not consummated; and if the cause is sought as to why the spouses did not cohabit, the advocate places all the blame on the husband, who was prevented from cohabiting by a temporary or permanent infirmity. This is truly proven, both because the husband claimed to postpone conjugal intercourse day by day, and because of his singular obstinacy, and also because of the testimony of two respectable witnesses, who sufficiently doubt the husband's potency. As for the reasons for a dispensation, the advocate states that there are not one, but many and serious reasons present. The first he derives from the dissociation of souls, which is such that no reconciliation can be hoped for.

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The second he finds in the probable doubt of the nullity of the marriage due to the husband's impotence; and with this doubt present, as De Luca says, "dispensation seems rather a certain administration of justice, prudentially administered under another, more honorable title, by the Prince" (Theat. ver. et tust, de mat. I. XIV, disc. 9, § 8). Finally, he states that another reason is the choice of a higher state, which the Church favors, and which she graciously grants to spouses who have never cohabited: "After a legitimate consent given in the present, it is lawful for either of the spouses, even against the will of the other, to choose a monastery, provided that there is no carnal intercourse between them" (Alexander III in cap. II de conv. coniug. l. III, t. 32 decr.).

[*Latin ed. p. 22*]

22. FROM THE HOLY GENERAL COUNCIL, SECTION VINCULI. On the other hand, the defender of the bond first observed that the spouses, while agreeing in affirming the lack of consummation of the marriage, disagreed in their accounts of the facts. Indeed, Paul stated: "I have never been able, even once, to have relations with her (his wife), she has always repulsed me, and she has always opposed the most energetic resistance to my attempts to consummate the marriage." Conversely, Mary affirmed: "If Mr. Paul has not consummated the marriage, it is because he did not want to, or because he was not able to." However, the orator stated, in legal proceedings, it is not the words, but the facts that are considered. Moreover, it is so far from Mary having been able to produce, not even in the present, but even in the very civil trial, any, even the slightest, proof of Paul's impotence, that the lay magistrate, with regard to the alleged impotence, included in the sentence: "It even seems that, from the beginning, even after the cessation of conjugal life, no one in the lady Lauzeral's circle seriously considered the hypothesis." Furthermore, he continued, even Mary herself, by the very fact of her actions, excludes the impotence of her husband, which she claims to have sold with words. Indeed, as soon as Mary learned that Paul had gone to Toulouse with the intention of not returning to his wife, she herself went to Toulouse; and there she attempted to entice the man back to her, using those very enticements that no wife has ever, indeed, used towards a husband, whom she has discovered to be a useless log in the conjugal bed. From these statements, the defender concludes that, more clearly than the midday sun, it is not only that there is no basis for the claim of Paul's impotence, even if it were temporary, even if it were for a single day, but that the true cause of the conjugal discord lies in the secret love of Mary for her brother-in-law, Oarrère. Furthermore, the orator recalled the letter that the wife sent to her husband after his departure. In this letter, Mary is entirely devoted to showing that she burns with a vehement love for Paul, and that no one else is in her heart except Paul. Among other affectionate phrases, the following are noted:

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NOTES OF THE DEFENDER.

[*Latin ed. p. 23*]

BAYONNE. 23 "I love you... It was solely due to my affection for you... I have indeed shown you my affection... Someone will always think of you until their last breath; that someone is me... I come to assure you of a most faithful affection that will never abandon you... You believed me capable of caressing and kissing you in this manner, while not loving you and loving another." The very same Mary affirms before the lay magistrate: "It is not that my marriage to Monsieur Paul was burdensome or contrary to my desires. I married him primarily to please my mother, who indeed told me that if this marriage did not take place, she would die, but the union she offered me was in no way repugnant to me, and I willingly accepted it. As for my cousin, Monsieur Carrère, I had, in my youth, a secret inclination towards him, which neither he nor his family ever knew, and of which my mother, who disapproved, was the only confidante. I saw him very rarely, scarcely three or four times a year. It was my husband who prompted the confidence I later shared with him in Paris: we were walking, and he said to me that young girls were not as naive as they appeared, that there was not a single one who had not, before her marriage, had a little romance. It was then that I replied, you may be right: thus, I once had, for my cousin, a childish inclination, which is now completely forgotten. But this conversation took place between us in a very friendly manner, and he even thanked me for my trust in him. Monsieur Paul, who today revives this confidence and distorts its meaning, imputes to me, with the same exaggeration." Therefore, according to the speaker, the dispute in the lawsuit is between Mary and Paul. Paul accuses Mary of a grave crime committed with her cousin Carrère; Mary, in turn, maintains that she acted innocently with her cousin Carrère. But here, says the defender of the bond, it is most important to know the reason why...

[*Latin ed. p. 24*]

24. EX S. C. CONCILII: Hoc, utissime, secretum inter Mariam et sobrinum, quaestio quae neoconiuges ad divortium adduxit, excitata est in ipsa matrimonii novitate. Causa, repones forsan, posita est in repugnantia Mariae ad officia maritalia. At, iuxta oratorem, nihil a veritate hoc minus alienum cogitari potest. Nam Maria profitetur: "Memoria domini Carrère numquam inter dominum Paulum et me insequentem seriem relationum conjugalium interposita est." Ioanna Ferrie: "Ante matrimonium suum, dicebat se maritare ut mater esset." Ioanna Chaubard testatur: "Scio quod iuvenem (Mariam) (consummationem matrimonii) desiderabat." Sed vinculi defensor explicat hoc modo, quod Paulus, in matrimonii consummatione, notans damna quae fortasse ante coniugii celebrationem Maria passus est, et ad memoriam revocans secretum illud amorem inter

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Mariam et sobrinum Carrère, statuit uxorem, quam ab illa se putavit delusum, dimittere. Hinc necessitas venditandi inconsummationem matrimonii: hinc illae famosissimae epistolae a Maria ad matrem datae. In hoc affirmando, orator ad rem affert physicum experimentum in corpore Mariae peractum, ex quo liquet obstetricesque medicos peritos de virginitate mulieris valde dubitasse. Sane ad quaestionem: "An in Maria integritatem corporis observasti?", prima obstetrix, Maria Mollard, refert: "Observavi quod membrana hymen valde dilatabilis est." Secunda obstetrix, Maria Seylan, ad eandem quaestionem contenta est respondere: "Non possum me pronunciare. Nihil praecisum observare potui, nec pro, nec contra. Mihi visum est quod aliquid anomali in organis esset." Tertia obstetrix, Maria Mailhac, ait: "Orificium irregulare est et in uno eius bordis praesens est incisura quae ut laceratio accipi posset, si non esset absentia completa carunculae myrtiformes, quae consequentia sunt relationum conjugalium."

[*Latin ed. p. 25*]

BAYONNE. 55 The aforementioned physicians, being experts, also discovered the most serious signs of the loss of virginity. Furthermore, the advocate states, it must not be overlooked that midwives and experts also discovered very grave signs of violated virginity in Mary, even though they only superficially and incompletely examined her body. Indeed, both the midwives and the physicians, as is evident, only superficially observed certain aspects of the hymen, neglecting other things which cannot be overlooked when determining whether a woman is a virgin in such difficult and serious matters. Moreover, these same experts did not issue a written report of their findings; it was considered sufficient to question them orally, even though the celebrated Instruction of August 22, 1840 most wisely prescribes that a written report should first be prepared, and then an oral examination should be conducted. Furthermore, in the aforementioned Instruction, it is mandated: "Each examiner must proceed separately." That is to say, one (the expert or rather, the midwife) who is to examine the woman in the room where she is staying, must not enter until the other has completed the examination and has left the same room. To avoid all of this, it is prescribed that each midwife or expert should give their judgment and produce a written report, not only in the absence and without the knowledge of the woman who was examined, but also in the absence and without the knowledge of other experts, so that each one may issue their judgment and testimony regarding the completed examination before knowing the opinion of others. However, this precept was not followed prudently by the midwives and physicians of Bayonne. Therefore, the advocate argues, the examination of Mary's body by the midwives and physicians of Bayonne was so imperfect and abnormal that nothing certain can be derived from it; indeed, he says, there are more indications of the loss of virginity. As for

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the confession of the spouses, the advocate reports, besides the fact that they are diametrically opposed to each other, since they recount an unconsummated marriage, the husband, satisfied with the victory obtained in the secular court, in the ecclesiastical

[*Latin ed. p. 26*]

26. According to the judgment of the Sacred Council, one ought to refuse to swear. However, when questioned, "Is it true, as you have alleged, that this marriage has not been consummated?" the wife, with her mouth slightly open, replies: "I believe that it has not been consummated." When pressed with a firm question by the judge, Mary evades the issue with these words: "If I used the words, 'I believe that the marriage has not been consummated,' it was because, at the time when my husband attempted this consummation, I was unaware that consummation consisted in the penetration of bodies. My mother and other close persons, to whom I had the opportunity to speak about this matter, told me, based on my explanations, that the consummation had not taken place." However, the advocate replies that with this recounted response, Mary was greatly ensnared. For, first of all, she hastily objects: "At the time when my husband attempted this consummation, I was unaware that the consummation consisted in the penetration of bodies." Indeed, when Mary used the word "I believe," she certainly employed knowledge, which she possessed on August 9, 1897, that is, at the time when she was speaking, and not ignorance, as if she had been laboring under it in the novelty of marriage. But, the defender of the bond states, it must not be overlooked that Mary, on August 15 of the preceding year, 1897, again approached the judge, and while attempting to explain the inexplicable, she made this most precious confession: "Before the first time (of copulation), he (her husband) himself clearly explained to me how marriage is consummated, which I did not know until then. I understood well what he told me, and I submitted without any resistance to what was necessary for the consummation." With these observations, the purpose was to examine the question: Whether it is necessary to consult with the Most Holy (authority) regarding a dispensation from a marriage that is valid but not consummated in this case.

RESOLUTION. After thorough discussion, the Sacred Congregation, on March 18, 1899, decided to respond: Affirmative.

[*Latin ed. p. 27*]

27. PARIS. OF THE NULLITY OF MARRIAGE. January 28, 1899. Session 14, Chapter 1, Concerning Reforms in Matrimony. COMPENDIUM OF THE AGREEMENT. Martha, the plaintiff in this cause, was orphaned at the age of ten months and eighteen days. Shortly thereafter, her mother, Rosa Biot, entered into a second marriage with a certain Raphael, of the

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Jewish nation, having previously obtained a pontifical dispensation from the impediment of disparity of cult. However, the mother, being unable to attend to the education of her daughter due to constant travels, entrusted her to her grandmother for safekeeping, with whom the young girl spent her childhood, and later, for the purpose of receiving an education, she entered the Monastery of the Religious Sisters of the Most Sacred Heart, until the year 1891, when, being eighteen years of age, she returned to her mother's home. At that time, a certain Aloysius, captivated by Martha's beauty, requested her hand in marriage from her mother. However, the mother, being aware of her daughter's aversion to Aloysius, initially resisted the man's requests; but later, perhaps influenced by his wealth, and believing that this marriage would be beneficial to her daughter, she not only consented to the marriage, but imposed it upon her daughter. It is said that Martha, either because she was attached to another love, or because she greatly disliked Aloysius, vehemently rejected the proposed marriage. However, it was all in vain: for the mother imposed this marriage upon her daughter, and, if what is now being recounted is true, she did not only employ moral coercion to obtain her consent, but at times, even physical coercion. Meanwhile, Martha, after having tried everything in vain to persuade her mother, finally, albeit unwillingly, had to yield. Therefore, after the betrothal, on November 28, 1891, in the chapel of the Apostolic Nunciature in Paris, Martha, then nineteen years old, married Aloysius. However, this marriage was not a happy one; the spouses maintained conjugal relations for almost four years, and then...

[*Latin ed. p. 28*]

28 They received the children of the Holy Council; however, due to increasing domestic disputes, their conjugal life came to an end, and the man petitioned the civil court and obtained a divorce decree against the woman. Subsequently, Martha, having learned from her confessor that her marriage was null due to a grave impediment, sent a petition to the Archbishop of Paris, requesting a declaration of the nullity of her marriage. Indeed, the Archbishop remanded the cognizance of the case until the pronouncement of a sentence by the delegated judge, who, after establishing a tribunal, heard the sworn testimonies of the plaintiff, her husband, and several witnesses; and after considering everything, on February 12th of the preceding year, he rendered this judgment: "It is established that there is a nullity between Paul and Martha, but the legitimacy of the children is preserved." Synopsis of the Dispute. DEFENSE OF THE WOMAN. He who defends the rights of the plaintiff divides his argument into two parts, in the first of which he seeks to prove that Martha married Aloysius under a grave fear of some natural evil, caused freely and unjustly, in order to extort consent. And first of all, he recalls that, in law, a grave and unjust fear invalidates marriage. The gravity of fear, according to Sánchez, *lib.* IV, disp. I, n. 10,

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depends primarily "on the gravity of the present or future evil, and on the persuasion that that evil truly threatens us." But in determining the gravity of fear, one cannot disregard the conditions of the person to whom some evil is threatened. For fear is a certain subjective affection or passion, which therefore depends on the conditions of the subject itself. Hence, as Sánchez rightly teaches in the aforementioned place, *De matrimonio, lib.* IV, disp. 1, n. 10, that evil is considered and is grave "which the person fearing cannot easily endure." Therefore, in the Instruction which concerns the impediment of force and fear, issued by the Holy Office on June 20, 1883, the following is noted in § 35: "Furthermore, the gravity of fear arises from the nature of the threats, from the quality of those who..."

[*Latin ed. p. 29*]

PARISIAN. Twenty-nine [witnesses] testify, followed by those who claim to have suffered from her actions. These three, therefore, are to be investigated particularly closely. With these points established, the advocate proceeds to recount the facts; and first, addressing the nature of the abuse, he states that it is beyond belief how much misery and unhappiness Martha endured from her mother during those six weeks that elapsed between the betrothal and the marriage. "I had to endure," the witness testifies, "the most violent scenes and the worst treatment from my mother because of this marriage. The very next day after the proposal that I have already recounted, around eleven o'clock at night, I was undressing in my dressing room when my mother entered and said to me: 'Tomorrow we will go and visit the sister of your fiancé.' I replied sharply: 'But he is not at all my fiancé; I have not accepted him as such.'... Then, in a fit of rage, she first shook me violently, and then she slapped me twice with considerable force. My maid entered at that very moment. She saw her give me those slaps..." Indeed, Aloisia Vinot, who at that time was a servant in the Suarez family, recounts the same thing. These confrontations between mother and daughter occurred most frequently when either one or the other person insisted on the unfortunate daughter's prayers before her, urging her not to force the daughter to marry: "The very evening," the witness says, "of the day when Monsieur Fortunet intervened on my behalf, my mother called me, and after strongly reproaching me for that intervention, she asked me if I had requested it, or if he had offered it to me spontaneously. I told her the truth; that I had requested it... and she gave me two more slaps... — I was also beaten by my mother under the same conditions after the intervention of Monsieur Cattani, and that of Monsieur Paul Olaguier. Threats always accompanied these acts of violence. She would first threaten to send me back to the convent until I was twenty-one years old. But then, seeing that nothing

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could make me give in, she finally..."

[*Latin ed. p. 30*]

30. "EX S. G. CONCILII," [the witness] stated, and [she] told me that, in her capacity as the elder, I had no right to choose or refuse anything. The witness, Vitricus, who, after recounting these very things, added: "It was every day that such scenes were repeated, even two or three times a day, and my wife recounted them every evening." Then the man who testified in the same manner stated: "These were scenes between the two of them that I did not know in detail. But I remember once that Mademoiselle came to Salona after a scene of a particularly violent nature, saying that if it continued, she would flee from her mother's house." The witness's confession deserves full credence, the advocate says, both because the description of the circumstances lends credence to the asserted facts, and because, since everyone agrees regarding her veracity and piety, there is no reason to doubt her in any way. Indeed, the advocate continues, the mother confirmed this, but by revealing it, she indicated that the matters were more serious than they appeared at first glance. Thus, she testified: "At first, I tried to convince my daughter with very good reasons... But persuasion was unsuccessful; I saw only a ridiculous stubbornness in my daughter, and I thought more and more about the little novel of which I have already spoken. Seeing that she would not yield, I became angry several times; I even struck her. I then threatened to send her to the convent, not for six months, but to leave her there until she was twenty-one years old." And a little further on: "I found myself forced to be severe; I am, moreover, very quick-tempered, even impetuous. I remember that one evening, I believe we were going out to go to the Opera, the sight of my daughter upset me; she looked like a martyr. We were talking, and she told me: 'that she would never forgive me.'" This remark enraged me, and I threw myself upon her like a fury, striking her on the head... One day, Monsieur Louis brought to my daughter a jewel box, in which there were diamonds. When she showed it to me, she said to me, almost throwing the jewel box in my face: "Here are those diamonds: I will never wear them." I initially wanted to...

[*Latin ed. p. 31*]

PARISIAN. "She was reasoning... But because she kept repeating that she would never wear jewelry from that gentleman, I lost my temper and I struck her... These scenes constantly repeated themselves during the six weeks of engagement, with the same violence on my part." The advocate then pointed out that the mother's testimony must be considered of the greatest importance. Indeed, she testifies to a fact that certainly does not diminish her honor. Therefore, according to the advocate, this testimony can be considered as a confession of the facts, which is called the queen of evidence in law. Hence, the Sacred Roman Rota taught in Decree 732, §

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coram Emeriz, that the testimonies of those who have instilled fear should be given more weight than others: "Parents who have instilled fear are admitted to testify, and when they testify about a fact pertaining to themselves, it should be given more weight to them than to others." Furthermore, he adds that the things confessed by the plaintiff and her mother are confirmed by several other witnesses, among whom are not only relatives and servants, but also witnesses summoned by duty. Thus, among others, the stepfather said: "My wife exerted a real and serious pressure on my daughter." – "As for me," said Aloysius, "she [Marthe] was always excessively cold... However, she never said to me words that my return to the house would be impossible; but today my conviction is that if she had not been terrified by the mother, she would have said them to me more than once; but she trembled like a leaf before her mother; I also deduce that if she did not say them, it is because the next day she would have suffered even greater violence." Furthermore, the advocate brings to light the nature of the plaintiff. Indeed, the witness summoned by duty, Ferdinand L'huilier L'hereux, testifies: "The character of Madame the mother is authoritarian. One perceives this even in conversations; one must not contradict her, even on the most insignificant details... This authority is so strong that Monsieur, her husband, if I may use the expression, is before her like a little sheep." The same thing is affirmed.

[*Latin ed. p. 32*]

32. From the testimony of the General Council, the husband, although he condemned the violence used, did not insist solely on this reason: "Because, on the other hand, the wife possessed a completely dominant character, I did not think it necessary to insist," and he continues: "The authority of my wife over her daughter, and even more so the nature of her character, which generally imposes orders when she expresses a will, easily overcame the natural gentleness of this child." The Lord Aloysius, the actress's husband, testified: "Madam is an authoritarian person; her system of education was to control her daughter." Similarly, Henry Fortunet, a friend for many years, said: "Madam... is a southerner... Therefore, although she is good, a violent feeling is enough to upset her and make her absolutely wicked." Also, Mary Reichsoffer stated: "Madam... was good, but of extraordinary violence, with no limits in her outbursts." Finally, omitting others, Gustavus Mame stated the same thing. Furthermore, the speaker considers the most serious circumstances in which both the mother and her daughter were situated, to explain the profound fear. Indeed, he says: "The mother's family was lacking in resources, and the mother herself possessed nothing with which to provide for Martha. Therefore, the only hope that remained was that the stepson, who seemed to be overflowing with wealth, would provide something for the daughter's dowry, as he had promised, and later actually did, through his love and insistence on his wife." But the

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mother feared that things might change later, or that she herself might die, and thus her plans would vanish, especially since the Lord S already had many children. Hence, because Aloysius was most rich and endowed with the best qualities of mind, the mother hoped that a great benefit would come to her daughter from this marriage. Driven by her violent nature and provoked by the daughter's resistance, she did not hesitate to force her daughter into the proposed marriage by violence. In addition, a certain Alfred, the stepson's nephew, vehemently desired to marry Martha.

[*Latin ed. p. 33*]

PARISIAN. Furthermore, the Lady... "married to an Israelite, and knowing all the disadvantages," absolutely detested the marriage. Moreover, it must not be omitted that certain witnesses affirmed that Marthe, being born of another man, was already "a burden" to the stepfather's family. All of these things, besides numerous witnesses, are confessed by the lady herself: "I was all the more inclined towards the Bounin marriage, because I certainly feared another, which I did not want at any price. My husband had a nephew who was pursuing my daughter. We were to make a journey to Egypt and there meet with this family. I was very afraid that this journey would thwart my plans, if my daughter were not married. At no price did I want to allow her to marry an Israelite." And a little further on: "I felt all the more inclined to overcome my daughter's resistance, because I had no personal fortune, and my husband was providing six hundred thousand francs as a dowry for my daughter. Therefore, I told my daughter that if she refused this match, I could disappear; that she would be left alone and without provision." The same is reported by Maria Reichschoffer and Paulus Dauprat, friends of the stepfather's family. What, then, could such a woman, in the circumstances described above, do, the advocate said, when, being orphaned of her father, she could trust no one but her mother, upon whom her entire fate depended? "She was entirely of her mother's making, affirms the witness Cattani; she depended on her, and she could find herself on the street overnight, if she did not submit." It should be noted that in this case, all those things are present which, according to the Most Holy Congregation of the Holy Roman and Universal Inquisition, in an Instruction given on June 20th of the year 1883, are to be considered: "It must be considered whether those who are accused of using threats and violence held parental authority and power, or whether those who suffered threats and violence were in no way subject to them: what is the purpose of the threats and violence, is it to prevent the proper benefit or honor from coming to the marriage? what is the character, condition, and morals of those who inflict the threats and violence; how have they been accustomed

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to govern their family: are they prone to anger and cruelty?"

[*Latin ed. p. 34*]

34. FROM THE DECREE OF THE COUNCIL, they were so harsh and obstinate that no one dared to contradict them or offer any objections. Finally, the advocate demonstrates the gravity of the fear instilled, noting Mary's age, which, at the time of the marriage proposal, was barely approaching her eighteenth year, and her naturally gentle and timid disposition. "My daughter has, throughout her life, obeyed her mother blindly; she is excessively mild-mannered," said Dominus Suarez. And Isidoras Ornstein, who had known Dominus Martha since her birth, testifies: "I believe Mademoiselle to be entirely gentle in character, easy to dominate and to guide." Moreover, Martha, who had for almost all of her life lived far from her mother, either with her grandmother or in a monastery, feared her mother more than she loved her. "My daughter," said the mother, "has lived little with me... Perhaps she had more obedience than affection for me. She feared me greatly." The advocate then proceeds to another point of the argument, in which he strives to demonstrate the gravity of the instilled fear by examining the circumstances that preceded the marriage, both those that were concurrent and those that followed. Indeed, he states, according to Instruction S. R. and U. I. no. 37j, it is most important to investigate these circumstances in order to understand the nature of the fear: "what this person has done to free herself from the coercion of her parents, whether she has used prayers, whether she has employed the help of others to dissuade her parents from the plan, whether and how she has expressed her aversion and opposition to the marriage, whether and how the other party has endeavored to truly conclude the marriage." Certainly, discussing the events that preceded the wedding, the advocate first points out that Martha openly protested her aversion to Dominus Aloysius from the very beginning: "My daughter (testifies the step-father) had already received very badly the communication that her mother had made to her in Biarritz regarding the plan of marriage with Monsieur Louis"; and on the very day of the betrothal, when, unexpectedly, she learned from her mother that she had been promised as a bride to Dominus Aloysius, she not only did not utter a single word, but she behaved in such a way that her...

[*Latin ed. p. 35*]

PARISIAN. 33. And it was manifest to all that there was opposition to the proposed marriage. This is also confirmed by the words of the aforementioned Aloysius's mother. Several other witnesses confirm the same, among whom are Ferdinand L'heureux and Henry Liepman, who were called to testify, and the actress's own mother, who said: "My daughter seemed like a martyr. Her attitude was absolutely closed off to me. She

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kept her distance from me as if I were an enemy." Therefore, the lawyer is not surprised that the gifts, however precious, which Aloysius sent to Martha, were either scorned or absolutely rejected by her. Furthermore, the lawyer continues, the unfortunate actress sought to defend herself by appealing to her maternal grandmother, and also to some family friends, in order that, if possible, they might dissuade her mother from her purpose. But she obtained nothing from these interventions except that her mother, incited to greater anger, doubled her harshness towards her daughter. This is testified to by the lady Suarez herself, who recounts what she said to her mother in Martha's defense: "The authority with which I spoke to my mother made her cry, but she did not speak to me about this matter again." Having thus explained the circumstances preceding the marriage, the lawyer proceeds to reveal the events that followed. Regarding the civil ceremony, the mother herself confesses that her daughter was "in a terrible mood, gloomy, and suffering." Regarding the religious marriage, which took place on November 28th in the chapel of the Apostolic Nunciature, the same witness recounts that, as they were walking together towards the Nunciature, the daughter openly declared to her, "that she would not say 'Yes'." Indeed, the lawyer contends, the witness, under oath and with religious protestations, testified that she had given no answer to the priest when he inquired about her consent. The lawyer does not hesitate to call witness Flaminio Raiberti and vi-

[*Latin ed. p. 36*]

36 FROM the Decrees of the Councils... it was said, firstly: "Regarding the sacramental 'Yes,' I can say that it was neither triumphant nor emphasized," and secondly: "Regarding the sacramental 'Yes,' another said that she did not say it clearly, but rather gave it mechanically, without the slightest enthusiasm." However, the speaker noted that, besides the fact that the actress's religion and piety are such that one cannot presume that she would deliberately deceive in a matter of such importance, the manner of speaking by both the woman and the witness Raiberti appears to be rather ambiguous: "She did not say the 'Yes' clearly," and "it was neither triumphant nor emphasized"; thus, it seems uncertain whether the actress truly expressed her consent. Moreover, it appears that the aforementioned witness Raiberti, shortly after the wedding, when he could more accurately recall the events, described the matter differently. Indeed, the witness, Henry de Chappuis de Maubon, testifies as follows: "Several of my friends, among them Monsieur Raiberti, who were better placed than I was at the ceremony, noted that the young woman had not answered the questions of the priest." Furthermore, he continues, after returning home after the sacred ceremony, Martha "did not want to participate in a celebration" which, as she herself wrote in a letter to the judge, was "a torment" for her; suffering from illness, she entered her room and remained lying

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in bed for a long time, until, as evening approached, she was forced to get up from her bed by her mother's reprimands, in order to depart for the city of Nice. "At home, she showed herself to be very unpleasant," affirms Madame Suarez. "Because she said she was suffering, she even went to bed... In the evening, when preparations were being made for the journey to Nice, she appeared very saddened; she said that her wedding ring was bothering her, and when I told her that she could not speak of her ring in that way, since it was blessed, she replied that it did not matter to her; that this ring, which chained, did not bind her to anyone." Moreover, the actress was so indignant because of the hardships she had to endure that she departed without greeting her stepmother and everyone else.

[*Latin ed. p. 37*]

PARISIAN. 37 Having stated these things, the advocate proceeds to present the subsequent events of the marriage, and first, he offers the letters which the distressed actress sent to her mother during the course of the marriage. "I would not wish to cause you pain, my dear mother," writes Martha: "We have already had enough troubles together to not begin our discussions again through letters. But I have a great weight on my heart. Married!... I have been married for almost eight days, and I cannot believe it, nor can I come to terms with this idea; and my poor mother, I scarcely dare to tell you, I cannot find any consolation in it." Regarding this matter, the advocate continues, it is not surprising that Martha refused to believe that Aloysius was her husband, and that she refused to give him his conjugal rights, and that the marriage could only be consummated through force and deceit: "I have never, the actress herself swore, granted what Monsieur Louis called – the conjugal duty." "Throughout the entire year that followed the marriage, I always refused, under all sorts of pretexts. It was even the cause of a violent disagreement between us from the very next day after the wedding. I had been married for a year when he took me for the first time, and by force. I struggled with all my strength, but I was the weaker. He did what he wanted; but from that moment, I felt an even deeper horror for him; and he never dared to approach me again. Nine months later, I gave birth to a little girl." The husband himself confesses the same thing, and it is unlikely that he would lie about this matter: "Yes," he says, "the young wife refused from the beginning the conjugal act. She repeated to me: 'that she had not wanted to marry me; that she did not love me; and that I was not her husband.' We lived side-by-side for several months, without there ever being any connection between us. It was only after a long time, and with the greatest reluctance, that she finally consented; to the point that these relations had

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no charm for me." The same is confirmed by many witnesses, who...

[*Latin ed. p. 38*]

38. They asserted that, at the Sacred Council, Martha, or as Aloysius states, at a time without suspicion, had said certain things. Finally, the advocate declares that, for the sake of brevity, he will refrain from recounting those events that followed for the next four years, during which the spouses lived in continuous disputes. But before concluding his argument, he considers it necessary to mention two points: one, which, as the Sacred Council has judged on several occasions, and expressly declared in Panormitano, renders a marriage null, contracted on September 30, 1719, "today after the Council of Trent, a marriage contracted with fear, and" after the fear has been removed through cohabitation with carnal union... "is not validated unless it is contracted again, using again the form of that same Council": the other, which, as the judge in Paris himself testified, completely eliminates any suspicion of collusion: "We examined the witnesses presented by both sides; these are the judge's words; we also summoned others from all sides. It is not probable that any collusion occurred between the parties, or between a party and their witnesses, and as for some witnesses, this is not only probable, but is entirely impossible. Furthermore, the advocate is a most virtuous and pious woman."

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. From the aforementioned, the defender of the sacred bond notes that the mother, while arranging these nuptials, had in mind not her own benefit, but that of her daughter, and he proves this primarily from the fact that Paulus Bounin was first rejected by the mother, and then by the daughter. Indeed, Paulus testifies: "I perceived that I had the intention of marrying Mademoiselle Marthe. Madame la mère remarked that her daughter was still very young, and these initial discussions ended there." However, the advocate says, she received him with open arms, and with a generous embrace, when she discovered that he was a man perfectly suited to her daughter. This is a true fact, relevant to the question posed by the investigators: "What reasons did this latter..."

[*Latin ed. p. 39*]

PARISIAN. Aged 39 (Marthe's mother) did she desire this marriage, and did she impose it? What advantages did she expect, both for herself and for her daughter? Elias Cattani replied: "Madam the mother saw in Monsieur Louis an ideal son-in-law, who presented a good match for her daughter." The same is confessed by Aemilius Huard. And many other witnesses testified in the same manner. Furthermore, Regina Richshoffer states: "As for Madam the mother, I am convinced that she was sincere; that she wanted the best for her daughter, and that she considered Monsieur Louis to be an excellent match. She had another concern: Monsieur her

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husband had promised to provide a dowry for the young lady, and she was eager to have her daughter benefit from this promise; saying to herself that she might die, and that Monsieur S, who had a very large family of his own, might forget Mademoiselle Frézet. Monsieur S had not even had time to become attached to the young lady, as one becomes attached to a child one has seen grow up and mature, since Mademoiselle Marthe, raised in the Convent or by her grandmother, had only been in his household for A FEW MONTHS." From these statements, the defender argues that there is absolutely no reason to doubt the value of this marriage from the perspective of force and fear. Indeed, he says, the mother urged her daughter to enter into this marriage because it was most advantageous for her daughter, and because through this marriage, the daughter would secure a dowry from her husband and avoid those disadvantages that a Jewish son-in-law would not provide. Therefore, the mother did not inflict an injustice on Marthe by arranging this marriage for her, but rather fulfilled the duty of a prudent mother. And you will not say, that the mother used threats, beatings, or torments to persuade her daughter to marry Aloysius. For the advocate replies, and even if threats and acts of cruelty had occurred, which he denies, yet if the mother employed them out of a sense of maternal duty, then the mother is not to be blamed, but the daughter, who resisted the just counsel and commands of her mother. And therefore, according to the defender, the torments, beatings, and threats would have been justified.

[*Latin ed. p. 40*]

40. From the decrees of the Holy General Council, it follows that nullity can arise, which necessarily presupposes either injury or unjust fear. Indeed, he argues, the nullity of such a marriage would certainly result from that very law of complete restitution, by which the Praetor declares: "That which was done by force or by fear, I will not consider valid." However, the advocate of the marriage asserts that that edict does not apply in the case of justly instilled fear. See 1. 3 ff. regarding what is stated there concerning fear: "Therefore, this clause contains both force and fear; and if anyone has done something under compulsion, by this edict he is restored." But we understand "force" to mean something atrocious, and that which is contrary to good morals; not that which a magistrate rightly introduces, namely, by lawful means and by the law of honor, which he maintains. Furthermore, Pomponius writes that if a magistrate of the Roman people, or a governor of a province, has done something unjustly, this edict applies: "For, he says, if someone has extorted money from another by the terror of death or of flogging." On this matter, Palacios teaches: "Fear only invalidates a marriage when a serious injustice is committed." It cannot be objected that no private person has the authority to compel someone into marriage. Sánchez de Matrim, book 4, disputation 13, paragraph 9, raises this very objection and responds: "If this argument were valid, it would also be valid

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to say that if someone extorted consent for another contract, that contract should be rescinded. Which is false, as I have said in book 4, disputation 8, paragraph 8, because no private person has the authority to compel anyone into any contract." But, the advocate argues, it is so far removed from the truth to consider the mother as an extraneous person in such matters, that on the contrary, in the Council of Trent, it was debated whether marriages contracted without the consent of the parents should be considered invalid from the very beginning. Nor is a better objection presented, that it has been proven by experience that the mother has not brought happiness to her daughter through such a marriage. For, the defender responds, besides the fact that it is not clear that the daughter's fault did not cause the marriage to fail; nevertheless, in judging whether the fear was just or unjust, the facts that were present at the time must be examined.

[*Latin ed. p. 41*]

PARISIAN. 41, was struck, not by what subsequently occurred contrary to expectations. Indeed, he argues that the mother is divinely obligated to consider the spiritual and temporal well-being of her daughter, and to take care that no harm befall her daughter. Therefore, it is not to be believed that divine law is violated because the mother, in seeking to fulfill what that same divine law prescribes to the mother, has acted in a way that appears to conflict with the daughter's will. However, the speaker proves that the mother always intended the good of her daughter in these marriages, from the very words of the mother herself, who swore: "I saw nothing in my daughter's resistance but an inexplicable obstinacy, or the stubbornness of a child who says, 'I will not obey,' " and she adds: "My husband did not exert any pressure on my daughter to decide on the marriage with Monsieur Louis; but he, like me, thought that it was a very good match." And the mother does not lie in this. For the actress's stepfather testifies: "I myself considered the proposed marriage to be excellent, which explains my reserve." Nor is it the case that the mother urged her, but rather compelled her daughter to marriage with threats and torments. Indeed, the speaker replies, it is the mother's duty not only to promote the good of her daughter, but also to avert evil from her. Therefore, in order to determine whether the mother was justified in using threats and torments, it would be necessary to know what evils would have befallen the daughter if she had not married Aloysius. The speaker deduces the evils that would have befallen the daughter from what the mother herself reported to the judge: "I was all the more inclined to this marriage, because I greatly feared another marriage, which I would not want at any price... She had become enamored of a young man we knew, and she thought of him constantly." And Henry Chappuis calls the mother: "Very eager to dissuade her daughter from another match, for which, moreover, she had serious reasons to reject it." It will not be irrelevant, the speaker believes, to mention what Flaminius

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Raiberti, a witness by office and a friend of Aloysius, has related concerning the divorce of Marthe between Aloysius: "The cause...

[*Latin ed. p. 42*]

42. Immediately from the Council documents, it is evident that my friend experienced a violent fit of jealousy, justified by the hostility and hatred that his wife showed him, a jealousy that was destined to lead to a quarrel and make divorce inevitable. Indeed, the jealousy that Flaminius Raiberti, a witness by office, attributes to his friend Aloysius, according to the judgment of the civil judge, is as follows: "It is established and it results from the documents submitted to the court that the Lady Marthe neglected all her duties as a wife, and violated the bond of marriage." Therefore, the defender of the marriage continues, even if in reality there is nothing else besides what is stated: "She (Martha) had become enamored of a young man, and she constantly thought about it, and (the mother) had serious reasons to prevent this union." No one will consider it unjust or burdensome for the mother to command her daughter, so that, since she did not wish to marry Paul Bounin, she should return to the monastery, remaining there until the age of 21. "I then threatened (said the mother) to send her back to the convent, and not for six months, but to leave her there until she was 21 years old." And the very Marthe testifies: "She (the mother) had to send me back to the convent again until I was twenty-one years old." Furthermore, the defender of the marriage continues, it is not only the case that Marthe did not marry Aloysius out of fear, unjustly instilled in her by her mother, but on the contrary, it is evident from the documents that no fear whatsoever was present. Indeed, he says, fear, by which a marriage is invalidated, is not conceived, as stated above, unless the person about to be married is afflicted by injustice. Indeed, in the records are found two letters sent by the daughter to her mother after the marriage, from which it is clear that Marthe did not marry Aloysius out of love, nor out of the deepest affections of her heart, but rather, she yielded to her mother's wishes: a mother, indeed, who, although with some reluctance, nevertheless embraced her plans with mature deliberation and tranquility of mind. Truly, Marthe wrote to her mother, while still in the midst of her married life: "I have been married for almost eight days...," wrote Marthe, "I cannot believe it, nor can I become accustomed to it."

[*Latin ed. p. 43*]

PARIS. 43rd idea; and my poor mother, I scarcely dare to tell you, I cannot console myself over it. And in another letter, she says: "You say that you have acted perfectly, with a view to my future... But the future is far away... and the present is odious. I know very well that you have more reason and experience than I do, dear mother, and I should believe you; but your arguments, no more now than before, cannot convince me... I hope

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to find a letter from you that will console me... and that I may complain... Farewell, dear mother, I embrace you a thousand times, as well as my father-in-law." In these words, the speaker finds no trace of fear or of injuries inflicted. Indeed, the advocate rejects this supposition through the aforementioned words, "dear mother, I embrace you a thousand times," and other similar expressions. Having considered both sides, the purpose was to be dismissed. It is doubtful whether the judgment of the Archdiocesan Court of Paris should be confirmed or rejected in this case.

RESOLUTION. The Sacred O. C. debated the matter on January 28, 1899, and decided to respond: The judgment is to be confirmed.

FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF VERULANA, REGARDING JURISDICTIONAL MATTERS.

February 24, 1899.

SUMMARY OF THE FACTS. On January 17, 1897, the Reverend Bishop of Verulana issued a decree, by virtue of which the Pia Unio B. M. Virginis a Pietate, as well as other pious sodalities existing in the city of Verulana, were exempted, except for the sodalities commonly called the Sacconi and the Sac1.

[*Latin ed. p. 44*]

"44 From the decrees of the Bishop and the regulations, granted to them by a special privilege, it was forbidden to transfer, associate, and inter corpses of deceased faithful, even if these were members of their respective confraternities, since this faculty, as stated in the decree, had already been granted and recognized to the confraternity of the Holy Rosary by the Congregation of Prayers and Mortals. Against this decree of the Bishop, the Pious Union of the Blessed Virgin Mary, called 'of Piety,' presented an appeal to the Holy Congregation of Bishops and Regulars. The question was presented in the plenary session of the Most Eminent Fathers on March 17th of the previous year, and the doubt proposed was: "Whether and in what way the decree of the Bishop is to be maintained in this case?" The response was: "It is not to be maintained." Against this decision, the confraternity of the Holy Rosary immediately petitioned for a new hearing, and this was graciously granted. The Bishop of Verulam notes that the controversy should not, at present, extend to the right of associating corpses or delivering the coffin, but should be limited to the right of transporting corpses for burial. However, since the Pious Union of Piety appealed against the decree of the Bishop, which includes the right of transferring, associating, and interring, this very matter is again discussed in its entirety. Synopsis of the Argument: The members of the confraternity argue first from the decree of its own erection, made by Bishop Battista of Verulam on March 18, 1575; for by this decree, they were granted the right to bury and transport for burial all corpses of deceased faithful, as is evident from the act of aggregation of the confraternity to the

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Archconfraternity of the Holy Rosary of the City on April 15, 1576, in which the aforementioned decree is mentioned. Furthermore, the members cite the Bull of Gregory XIII, issued on May 7, 1576, on the occasion when some confraternities of Verulam attempted to claim this right for themselves: in this document, the exclusive right of the confraternity of the Holy Rosary is recognized by these words: 'This confraternity has obtained for itself the right of burial.'"

[*Latin ed. p. 45*]

VERULAN, in paragraph 45, solely prescribed this [practice] concerning the deceased, and for this reason, it was instituted." Hence, the Members conclude that, whether one considers the decree of erection and aggregation to the Archisodality by Morte in Urbe, which had the same objective, or the Gregorian Bull confirming the privilege, concerning the exclusive faculty of the Sodality to transport and bury the bodies of the deceased, there can be no doubt. The Members maintain that they have persevered in the peaceful exercise and possession of this right up to the present, and have never been disturbed by other confraternities. On the contrary, the institution of the year 1750 of the Sodality of Subvention of the Dead is opposed. But the Members reply that it itself was a part of the Sodality of Charity, and they prove this by the decree of erection, in which the Brothers of the Subvention of the Dead are said to be united to the ancient Confraternity of Charity, or of Death, of the city of Verulana; they prove it by the statutes of that same Sodality; they prove it by the fact that the Members of the two Sodalities wore the same black habit and assembled in the same oratory. Finally, the Members, omitting other conjectures, conclude from the fact that, in the year 1778, the aforementioned Confraternity having ceased to exist, the Sodality of Charity succeeded to the administration of its goods. But even granting, for the sake of argument, that the exclusive right of the Sodality of Charity to transport and bury the bodies had also been exercised by the Confraternity of Subvention of the Dead, it is certainly the case, the Members say, that from the year 1778, the aforementioned Confraternity no longer existed; hence, the Sodality of Charity was restored to its exclusive right, and has remained in its peaceful possession up to the present. Similarly, the invocation of the two Sodalities, commonly called of Sacconi and dei Sacchetti, is equally irrelevant, since these were instituted solely for the association and burial of the bodies of their members. As for the Pious Unions of the year 1870, established for the transportation and burial of the bodies of the deceased in the public cemetery, the Members reply that their own exercise of this right was temporarily suspended due to the enormous expenses that the Sodality of Charity had to bear for this

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purpose, considering...

[*Latin ed. p. 46*]

46. From the decrees of the Holy General Council and the regulations, it should be clear that the distance of the cemetery [from the church] was a matter to be determined; furthermore, the aforementioned Associations were not canonically established, and consisted of lay persons who, of their own accord, performed this pious work, expecting compensation from the Municipality. The Members note that the gravediggers hired by the Municipality to transport the bodies were obliged to wear the Society's [Sodalitas] sack, and that the Municipality subsequently decided to entrust this work of mercy to the Society [Sodalitas a Morte] with an annual payment of 700 florins. Although the Municipality may wish to put this funeral service out to bid, nevertheless, all other things being equal, the Society [Sodalitas a Morte] is preferred, which fact implicitly demonstrates the Society's [Sodalitas] own right; and no objection has ever been raised by the other confraternities, if one were to deny the claim of the Society [Sodalitas a Pietate]. Finally, the Members observe that in the statutes of the opposing Society [Sodalitas], there is no mention of the right to associate and to transport the bodies of the deceased; nor can the Society [Sodalitas] claim this right based on the fact of its aggregation to the Arch-Society [Archisodalitas] of the City, because: 1. this aggregation was made without the consent of the Bishop of Veruli; 2. because the Societies aggregated to the Arch-Society [Archisodalitas] of the City do not enjoy the privileges of aggregation, but only indulgences; 3. because, according to the statutes of the Arch-Society [Archisodalitas] of Pietà of the City, the Members only intervene in the transportation of bodies when they are spontaneously invited, whereas the Members of the Society [Sodalitas] of Pietà of Veruli always wished to participate. Moreover, the opposing Society [Sodalitas] falsely claims to evade the Apostolic Bull of Gregory, which granted a privilege, alleging that the privilege granted was lost by the Society [Sodalitas a Morte] through non-use; indeed, apart from the fact of peaceful possession previously mentioned, which refutes the objection of the opponents, the Members observe that, with Moncelli in his legal compendium of ecclesiastical law, vol. 1, page 168, no. 23, edition of Rome, the Apostolic Constitutions are not abrogated by non-use, but are necessary knowledge of the Pope, or even a moderating Bull. Therefore, even if a privilege is not used, according to the Members, it cannot, for that reason alone, be argued to be extinct.

[*Latin ed. p. 47*]

VERTI LANA 47, namely: Therefore, they conclude that the decree of the Bishop of Verulam must be confirmed. DEDUCTIONS OF THE PIOUS UNION OF MARY, CONCERNING CHARITY. "The Advocate divides his argument into two parts: in the first, he argues that the opposing Society

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does not possess the exclusive privilege of associating with and transferring the bodies of the deceased; in the second, he maintains that even if it did possess such a privilege, it has already lost it. Regarding the first point, the Defender observes that, by the Bull of Gregory XIII, only the canonical erection of the Society of Charity was approved: "We, by the authority of the present document, approve and confirm the aforementioned Brotherhood, insofar as it was canonically and without prejudice established." And the goods of the church of St. Nicholas were assigned to it, which afterwards became its oratory; nor does any part of the dispositive text of the Bull speak of the alleged privilege of association and transfer of the bodies of the dead. Indeed, it is true that this is mentioned in the narrative part, but the Pope only intended to approve the canonical erection of the Society. Nor, according to the Advocate, does it benefit the opposing Society to adduce its aggregation to the Arch-Society of Prayer and Death of the City; 1. because the aggregated Society does not participate in the privileges of the aggregating one, as is stated in the very decree challenged by the Bishop of Verulam; 2. because, even the Arch-Society of Prayer and Death itself does not enjoy this exclusive privilege of association and transfer of bodies, as its own Secretary testifies, and its purpose is limited only to taking and transferring the bodies of the deceased to the cemeteries. Furthermore, the Advocate deduces, from the fact that all the diocesan Synods of Verulam are silent on this privilege, that it is a pure fiction. Indeed, as they are silent on other matters, in the Synod of Bishop Maurizio in the year 1863, in the chapter on funerals, it is stipulated that if any Society or Brotherhood, whether called or acting out of pure charity, should attend to associating with and transferring the bodies to..."

[*Latin ed. p. 48*]

48. From the decrees of the Holy General Council and the decrees concerning burial, at least five confratres shall be sent; which could certainly not be explained under the hypothesis of a previously alleged privilege. This argument gains even greater force from the institution of the Sodalitas Subventionis Mortuorum in the year 1750. For, as it is stated in the first chapter of the statutes, this sodality was established because, at that time, there was a lack of individuals who would willingly undertake this pious work for the deceased, out of charity. Indeed, the defender argues, if the Sodalitas had possessed a singular privilege of associating with and transporting corpses, it would never have permitted the establishment of the aforementioned confraternity. Moreover, the explanation given by the opposing Sodalitas, namely that the Confraternitas Subventionis Mortuorum formed a part of itself, is refuted, 1. because the Sodalitas Subventionis Mortuorum had its own rules and distinctions; 2. because the first meetings of the former were held in a *privata* house; 3. because in chapter XVIII of its own statutes, there are regulations for associating with and transporting

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corpses in general, which clearly contradicts the alleged exclusive privilege of the Sodalitas a Charitate. Furthermore, the defender observes that before the year 1870, almost all sodalities, with the exception of the sodalities commonly known as de Sacconi e Sacchetti, Verulanae, lacked a hearse and borrowed one for transporting the corpses of their members from the Sodalitas SS. Sacramenti. After the year 1870, specifically in the years 1873 or 1874, the Sodalitas a Charitate provided one, because the hearse of the Sodalitas Sacramenti had deteriorated with age, but it was stipulated that in the funeral of a member of any sodality, it would be transported simultaneously by two members assigned to the Sodalitas a Charitate and by two members of the sodality to which the deceased belonged: which clearly demonstrates that the privilege of the Sodalitas a Charitate for transporting corpses was not exclusive. Finally, the defender argues from the fact that often parents and friends in the city of Verulana themselves transported the corpses of the deceased, without the Sodalitas a Charitate intervening, and from the fact that after the year 1870, in the pious unions that arose for transporting corpses, the Sodalitas a Charitate never refused.

[*Latin ed. p. 49*]

VERULANA argued, and based on the facts present, although the Municipality pays the Sodalitas a Charitate an annual sum of 700 livres for the transportation of the bodies of the deceased within the city, the funeral service for the burial of the deceased in the cemeteries has been entrusted to others. Having completed the first part of the argument, the lawyer proceeds to the second, and vigorously defends the alleged privilege, even though the Sodalitas a Charitate had possessed this privilege from the beginning, but now it has been lost by it, 1. through non-use; 2. through abuse; 3. through prescription. Through non-use, because since the year 1750, or almost two centuries after the founding of the Sodalitas a Charitate, the Confraternity of Assistance to the Dead was established, for as is stated in its statutes, there was no one who would take care of the association and transportation of bodies free of charge, or out of pure charity. Through abuse, because in the association of bodies carried out by the Sodalitas in Aversa, not the members themselves are involved, but rather some poor people who, for the occasion, wear the Sodalitas's cloak, but do not form part of it. Through prescription, because even after the Episcopal decree of the year 1897, the transportation of bodies is carried out by people outside the Sodalitas, and as previously stated, it was also carried out by other Sodalitates, and because, as has also been observed, the funeral service for the poor, or for those who die outside the city in the cemeteries, is provided by the Municipality of Verulana itself at its own expense. It is true, the defender continues, that the statutes of the Pious Union of Piety do not mention the association of bodies; but it should be noted that this union was incorporated into the Archisodalitas of Piety of the City, whose

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statutes are observed with the consent of the Bishop. The purpose of this union is to carry out works of piety, among which the association of the dead should also be included. Furthermore, the decree of Clement VIII, *Quaecumque*, of December 7, 1604, which prohibits the existence of two Sodalitates of the same kind in the same city, does not apply; for the lawyer maintains that this does not prevent the existence of two Sodalitates.

[*Latin ed. p. 50*]

50. From the decrees of the Holy See and of the religious orders, it is clear that these associations have aims, but one is primary and the other secondary; the primary aim of the Sodalitas of Charity is the association and the conveyance of bodies; the primary aim of the Sodalitas of Piety is works of piety in general, and therefore also the association of bodies: for since this constitutes a work of mercy, reason dictates that it should not be the monopoly of anyone. These are the points of reason, deduced from both sides. However, a case was reported by the Relator ex officio, or by the Most Reverend Prefect of the Sacred Congregation, concerning a matter in Fermo, which was discussed in the Sacred Congregation of the Council on June 30, 1877, and which was seen to have a great affinity with the present question. The case is as follows. In the town of Molleani, in the Archdiocese of Fermo, there were two Sodalities, namely, the Sodalitas of SS. Suffragio and the Sodalitas of SS. Sacramento. The Sodalitas of SS. Suffragio, in a meeting on November 2, 1875, decided to make a funeral bier and coffin for the exclusive use of its members, and this decision was approved by the Archdiocesan Curia. The Sodalitas of SS. Sacramento complained to the same Curia, claiming that it had a private right, by ancient custom, to convey the bodies of adults to the church for burial, and to provide the funeral bier and coffin. The Archdiocesan Curia revoked the decree of approval and declared the decision of the Sodalitas of Suffragio to be null. However, the latter appealed to the Sacred Congregation of the Council. The Sodalitas of Suffragio opposed the decree of the Archdiocesan Curia for two main reasons: first, because the right to provide a funeral bier and coffin is a parochial right, and therefore cannot be subject to prescription, since parochial rights cannot be prescribed; the second reason was that the right to convey and bury the bodies of the deceased is a work of mercy which should not be the monopoly of anyone, and therefore is also imprescriptible. It supported these arguments with a third argument, namely, that the Sodalitas of SS. Sacramento exercised its right only when invited by the family of the deceased; therefore, it was dealing with a matter of free will, in which, as is customary...

[*Latin ed. p. 51*]

VERULANA, 51 gattum, non currit praescriptio. Hence, the argument of immemorial custom invoked by the opposing Sodalitas a SS. Sacramento

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was of little weight. And indeed, regarding the doubtful proposition "Whether the decree of the Archdiocesan Curia of Firmana should be confirmed or annulled in this case," the Fathers, on the aforementioned day of June 30, 1877, decided in favor of the Sodalitas a Suffragio, responding: Negatively to the first part, affirmatively to the second. These matters briefly elucidated, and the question being reiterated through the following query: Whether and how should the decision of March 11, 1898, in this case, be confirmed or revoked? RESOLUTION. The Sacred Congregation of Bishops and Regulars, having again examined the matter on February 24, 1899, responded: In the decisions, and furthermore. FROM THE SACRED CONGREGATION FOR RITES: Letters concerning the enhancement of the worship of the Most Sacred Heart of Jesus. Most Illustrious and Reverend Lord, It has always been pleasing to me to communicate with the Prelates of the Church those things which the Supreme Pastor has prescribed to be made known to them. But it is especially gratifying to observe how the most venerable Sacred Ministers have experienced the sweetest delight, which the Most Holy Pope Leo XIII felt from the promulgation of his latest Encyclical Letter, by which he authorized the entire human race to solemnly dedicate itself to the Most Sacred Heart of Our Lord Jesus Christ. He knows how much zeal and with what harmony of wills those letters have been received by all, both pastors and the faithful flock, and how readily and diligently they have been followed everywhere. The Supreme Pontiff himself gave an example to all; and in his Vatican Basilica, in the chapel which Paul V named...

[*Latin ed. p. 52*]

52. From the Sacred Congregation of Rites, it is known that, through a supplication, the entire orb of the earth was offered and dedicated to the Divine Heart of Jesus. Following this example, the Roman people gathered in large numbers in the patriarchal basilicas and smaller basilicas, in all curial churches, and in sacred buildings near each [location]; and there, they repeated the solemn formula of consecration, and with one voice confirmed it. Letters have been brought from everywhere, and are brought daily, announcing that the same rite of consecration has been carried out, with equal diligence and piety, in each diocese, indeed, in almost every church; not only in Italy and Europe, but also in the most distant regions. The entire Catholic people, in fulfilling the wishes and will of the Supreme Father of all, deserves the highest praise; and especially, the sacred prelates, who have been the authors and leaders of such a work for their flocks. Therefore, following the desire of the Supreme Pontiff, I greatly congratulate and give thanks to you and to all those who are subject to your authority, who are engaged in the care of souls, in His name. For, as the Blessed Father states in those same encyclical letters, he confidently expects that abundant and delightful fruits will be derived from this solemn

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offering, not only for individual believers, but also for the entire Christian family, and indeed, for all mankind, and we share in that confidence. For all deeply perceive how necessary it is that the faith, which is now languishing, be enlivened; that the flame of sincere charity be kindled; that the reins be placed upon excessively exuberant desires; and that some remedy be provided for the morals which are daily declining. It must be the desire of all that human society be subjected to the sweetest dominion of Christ, and that His royal right, divinely conferred upon Him over all nations, be recognized and revered by civil authorities as well; so that the Church of Christ, which is His kingdom, may be increasingly enlarged and perfected with the freedom and peace that are absolutely necessary for achieving new triumphs. Finally, it must be the endeavor of all to compensate for, and repair with pious works, the countless and most grievous injuries that are daily inflicted upon the divine majesty by ungrateful men throughout the entire world. But in order that the hope conceived may acquire new strength day by day, and that this good seed may flourish abundantly and bring forth a richer harvest, it is necessary that the piety aroused towards the most holy Heart of the Divine Redeemer be stable and persevering, indeed, be nurtured.

[*Latin ed. p. 53*]

From the Sacred Congregation of Rites, number 53. For constant perseverance in prayer brings, so to speak, a certain power to the most sweet Heart of Jesus, so that it may open the fountains of graces, which He Himself most ardently desires to bestow, as the Blessed Margaret Alacoque signified to her, not once, but repeatedly. Therefore, the Supreme Pontiff, through me as His interpreter, earnestly exhorts Your Eminence and all the sacred prelates of the Catholic world, that, diligently pursuing these endeavors, they devise and establish those things which, according to the varying conditions of places and times, seem most conducive to achieving the desired end. The Most Blessed Father also highly recommends that practice, which has already been adopted in many churches, namely, that throughout the entire month of June, various acts of piety be publicly offered to the Divine Heart: and in order that this may be more readily accomplished, the Church's treasures are opened, granting to the faithful a plenary indulgence for three hundred days, to be gained as often as they participate in such sacred exercises; and a plenary indulgence to those who perform this act at least ten times during the month. Moreover, the Most Holy Lord greatly desires that the practice, highly commended and already adopted in many places, by which, on the first day of each week of any month, certain acts are performed in honor of the Most Holy Heart, be more widely and constantly spread: reciting publicly the Litany, which He Himself recently approved, and repeating the formula of consecration proposed by Him. If this practice increases among the Christian people,

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and becomes almost a custom, it will be a constant and frequent affirmation of that divine and royal law which Christ received from the Father for all mankind, and which He acquired through His shed blood. Through these acts, He, being rich in mercy, is wonderfully inclined to bestow benefits upon men, and to forget their wickedness, embracing them not only as faithful subjects, but as most beloved friends and children. Furthermore, the Most Blessed Father earnestly desires that young people, especially those who are devoted to letters and sciences, be gathered into those societies which are pious groups or confraternities called the Sodalities of the Sacred Heart of Jesus. For they consist of a chosen group of young people, who, having freely given their name, assemble on a certain day and hour of the week, in chapels or churches, or in the halls of their literary gatherings, and there, at the direction of a priest...

[*Latin ed. p. 54*]

54 Following the guidance of the Sacred Congregation of Rites, certain pious exercises are devoutly performed in honor of the Sacred Heart of Jesus. If any act of devotion, pleasing and acceptable to the Divine Redeemer, is offered by the faithful, it is certainly most delightful when it springs forth from a youthful heart. Indeed, we cannot express in words how much such devotion will benefit that very youthful age. For the constant contemplation of the Divine Heart, and the deeper knowledge of its virtues and its ineffable love, cannot fail to restrain the burning desires of young people, and to add stimulus to the pursuit of virtue. – Likewise, such gatherings can be initiated and frequented among adults, in those societies of various kinds which are now called Catholic societies. Furthermore, these pious exercises, which we have mentioned, are not in any way prescribed by the Most Holy Father; but He allows everything to the prudence and wisdom of the bishops, in whose studious and most willing devotion He fully trusts: He desires only this, that piety towards the most sacred Heart of Our Lord Jesus Christ may constantly flourish and grow stronger among the Christian people. In the meantime, I earnestly pray for your lasting happiness. Your most devoted brother, in Rome, from the Secretariat of the Congregation of Sacred Rites, on July 21st, in the year 1899. C. CARD. MAZZELLA, S. R. C., Prefect. L. * S. DIOMEDES PANICI & R. C., Secretary. REGARDING the beatification and canonization of the Venerable Servant of God, Sister Mary Aloysia Maurizi, a professed nun and choir member of the Venerable Monastery of the Mantillatines on the Esquiline Hill, of the Order of the Servants of the Blessed Virgin. At the present time, with the Most Reverend Father Augustine Morini, General Postulator of the Order of the Servants of the Blessed Virgin, in the Royal Sessions of the Congregation of Sacred Rites, held at the Vatican on the date indicated, before the Most Eminent and Reverend Cardinal Lucido Maria Parocchi, Bishop of Portuensi and of S. Rufina, and Promoter of this Cause, the following

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question was discussed: "Whether the opinion given by the Most Eminent and Reverend Cardinal..."

[*Latin ed. p. 55*]

FROM SACRED RITUALS, 55, in the Vicariate of Rome, concerning the cult of the Venerable Servant of God, Sister Maria Aloisia Maurizi, which had never been exhibited, or concerning the preparation of decrees, by the Most Holy Urban VIII, Pope, is it to be confirmed in the case and to the effect of which we are speaking? And the Sacred Congregation itself, after careful examination of all matters, and having heard the voice and writings of the Reverend Father, John Baptist Lugari, Promoter of the Sacred Faith, decided to respond: Affirmative, that is, to confirm the judgment. On June 6, 1899. Subsequently, these matters were reported to the Most Holy Lord, our Pope Leo XIII, by the undersigned Cardinal, Prefect of the Sacred Congregation for Sacred Rites, and His Holiness approved and ratified the Rescript of the aforementioned Sacred Congregation, on the twelfth day of the same month and year. C. CARD. MAZZELLA, Prefect of the Sacred Rites. L. * S. DIOMEDES PANICI, Secretary. BRIXIA, concerning the beatification or canonization of the Venerable Servant of God, Alexander Luzzago, a patrician of Brixia. CONCERNING THE DOUBT: Does it appear that the Theological Virtues of Faith, Hope, and Charity in God and in one's neighbor, and also the Cardinal Virtues of Prudence, Justice, Temperance, and Fortitude, together with those things attached to them, are present in a heroic degree in the case, and to the effect of which we are speaking? Many outstanding examples of sanctity can be observed in those who have been duly consecrated to the sacred ministry, or who are bound by religious vows, so that they already have less cause for admiration; and many among the less learned are led to believe that it is not possible to reach the height of virtue unless one is either elevated by the priesthood, or has completely withdrawn oneself from the company of men for the sake of religion. But the outstanding virtue of those who, without any distinction of office or habit, and often involved in worldly affairs, have maintained the common course of life, clearly demonstrates how far this is from the truth; for their piety and proven virtue in every way are a wonder, and greatly benefit in instructing many how to become better citizens, more useful both in private and in public matters; for...

[*Latin ed. p. 56*]

56. From the Sacred Ritual, men of every condition possess [examples] from which they may draw, as it were, more domestic lessons on how to live a holy life. Among these men, Alexander Luzzago, a noble from Brixiensis, deserves to be ranked foremost. He was born in October of the year 1551, from a family which always flourished in nobility of spirit as much as in lineage. Moreover, he strove to achieve distinction through his own virtue

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rather than through that of his ancestors. Thus, he passed his youth with the utmost purity, combining it with the wisdom of old age, in the study of literature; then, in Brixiensis, Milan, and Padua, he devoted himself so diligently to philosophy and theology that he publicly debated on the former for two days, and in the latter, he was proclaimed a doctor. From this more profound knowledge of God, he kindled a powerful and outstanding zeal, first for his own, and then for the salvation of others. Therefore, he applied himself so diligently to constant meditation that he seemed to be doing nothing other than contemplating God, especially the sufferings and death of Christ, which provided ample material. From this contemplation, he chiefly achieved this: while living in the world, he nevertheless detested the world; being endowed with wealth, he declared war against himself and his own body. For he chastised his flesh with fasting, taking only the thinnest food once a day, he weakened himself with vigils, and he scourged himself with scourges. With such a way of living, it is no wonder that he restrained rebellious desires with incredible strength of mind; he was so devoted to chastity that he constantly rejected desirable proposals of marriage; indeed, he vowed perpetual virginity to God, and to this vow he added the intention of living a religious life in the Society of Jesus, as soon as he could. Although he was not able to fulfill this vow, he bore it with a serene spirit; nor did he feel that any part of himself was lacking in the qualities of a religious man. Meanwhile, he also cared for his elderly parents at home with no less diligence. For, even at the age of fifty, he never took anything from his father without his knowledge, nor distributed anything without his consent; he never left the city, and not even the house, except with the permission of his parents. To ensure that their wishes were fulfilled, he went to Milan with his father to venerate the sacred relics of St. Charles Borromeo, even though he was suffering from a summer fever; from this pilgrimage, his illness increased, and death followed, so that he remained obedient to the very end. But he who devoted so much diligence to seeking his own salvation also labored with all his might to promote the salvation of others. Whatever he could devise that would contribute to the advancement of good, he offered; whatever he could acquire for the benefit of others, he sought out.

[*Latin ed. p. 57*]

From the Sacred Rituals, number 57, his life was characterized by a complete dedication, sparing neither expense nor labor; indeed, he frequently forgot about food and sleep. No inn in Brixiae existed in which he had not left traces of his charity; neither rich house nor poor hovel. He either expanded or established schools for Christian doctrine. He encouraged associations of young people; he often used his own money to assist the chastity of virtuous girls; he took care to restore women of lost reputation to a good life. He engaged in learned and devout private prayers, whether

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at home or in associations of pious men. He restrained the deep-seated hatreds of the people of Brixiae, which the leading citizens of the city had vainly attempted to quell. He daily reminded his friends, whom he had gained through Christ, through letters, and he devoted himself to this task at night, with unceasing vigilance. He assisted the priests themselves in the sacred mystery, both through his words and writings, and through organized groups. Finally, no one failed to feel the fruit of such an active life, so that the words sung by the royal psalmist about the sun seem to apply to this man: "There is none who can withdraw himself from his heat." This excellent man, who had deserved so much from his religion and his country, whom the leaders of the city and the sacred ministers scarcely allowed to leave their side, was prematurely taken by death. After spending 51 years, and after a three-day period of prayer offered to Saint Charles, with whose body he had used as his guide and teacher, he peacefully breathed his last on the ninth of May in the year 1602. His sacred body was transported from Brixiae, not for burial, but for a triumph, with all orders and the entire city following, celebrating the most solemn funeral rites. His fame for virtue, even confirmed by miracles, suggested that heroic virtues should be conferred upon this man sooner; however, it seems to be the work of divine providence that this should be postponed to our present times. Now, as many Italians undertake a pious pilgrimage to the City, it seems that it will be understood that the noble man, through whose merits many associations of citizens have arisen to promote works of piety and to aid the Christian cause, will receive a considerable increase in the honors bestowed upon him by the Church; and nothing could be more pleasing, nothing more beneficial, could happen. The cause for his canonization, which has long been underway with the Congregation of Sacred Rituals, and in which all matters have now been properly completed according to the law, has undergone a threefold examination of heroic virtues.

[*Latin ed. p. 58*]

58. According to the Sacred Ritual, the process was completed. Indeed, the first meeting, in the preparatory assembly, took place before Cardinal Lucidus Maria Parocchi, the Relator of the Cause, with the Advocate, on the eve of the Kalends of September in the year 1897; the second, in a preparatory meeting held in the Apostolic Palace at Vatican, in the year 1898, on the fourteenth day before the Kalends of June; and finally, the third, in the general Congregation held there before Our Most Holy Lord Pope Leo XIII, this year, on the third day before the Kalends of June, during which the Most Reverend Cardinal Lucidus Maria Parocchi proposed a question for discussion: Does it appear that the virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those attached to them, were present in the venerable Servant of God, Alexander Luzzago, in a

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heroic degree, in the case and with regard to the matter under consideration? The Most Reverend Cardinals and other Consultors individually presented their votes. The Most Blessed Father, although grateful for their opinions and considering them, and with the help of divine light, intending to express his gratitude first, nevertheless deemed it prudent not to immediately reveal his own thoughts. However, on this day, the Sixth Sunday after Pentecost, solemnly dedicated in honor of the Visitation of the Most Holy Virgin, having offered the Host most devoutly to divine majesty, he summoned the Most Reverend Cardinals Camillus Mazzella, Bishop of Praeneste, Prefect of the Sacred Congregation, and Lucidus Maria Parocchi, Bishop of Porto and Santa Rufina, together with the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, solemnly declared: "It appears that the virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the cardinal virtues of Prudence, Justice, Temperance, and Fortitude, and those attached to them, were present in the venerable Servant of God, Alexander Luzzago, in a heroic degree, in the case and with regard to the matter under consideration, so that further proceedings may be undertaken, namely, the examination of three miracles." This Decree was ordered to be published and recorded in the acts of the Sacred Congregation on the sixth day before the Kalends of July in the year 1899.

C. CARD. MAZZELLA & R. C. Praef. L. © S. DIOMEDES PANICI S. R. C. Secr.

[*Latin ed. p. 59*]

FROM THE SACRED RITUALS, CANON 59, BAYONNE. Concerning the Beatification and Canonization of the Venerable Servant of God, Michael Garicoïts, Priest, Founder of the Congregation of Priests of the Most Sacred Heart of Jesus. The aforementioned Servant of God, Michael Garicoïts, was born in the town of Ibarre, in the Basque region, to pious and virtuous spouses, Arnold Garicoïts and Gratianna Etcheberry, on April 15th, in the year 1797. From his very childhood, he showed a mind inclined to religion, being nurtured by the care of his parents and devoted to sacred things. He was sent to the Iturense Seminary to learn philosophy; subsequently, he was transferred to the Major Seminary of the city of Aquae Augustae, commonly known as Dax, where he completed his studies in theology. Ordained to the priesthood on December 20th, 1823, he was assigned as an assistant to the parish priest of the place called Cambo, where he diligently performed the duties of the sacred ministry for two years, to the spiritual edification of the inhabitants, as well as of others from neighboring and even distant parishes who came there. At the end of the year 1834, after having happily overcome many difficulties, in order to assist the Church prelates in cultivating the vineyard of the Lord, he founded, in Betharram, a sodality of priests called the Most

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Sacred Heart of Jesus; which, under his leadership, and adorned with the approval of the Apostolic See, gradually increased, extending to several countries and dioceses, even in South America, and bringing forth excellent benefits. This Servant of God, as arranged by the Bishop, for thirty-seven years served as a confessor and counselor to certain houses of the Institute of the Daughters of the Cross, commonly known as the Sisters of St. Andrew. Finally, on the feast of the Ascension of Our Lord, in the year 1863, he was seized by a sudden illness and, being unable to receive the Viaticum, fortified with the sacraments of penance and extreme unction, he peacefully departed this life in the aforementioned house in Betharram. Hardly had the news of his death been announced, when all were filled with sorrow, especially the Archbishop of Bayonne, who, presiding and speaking, celebrated the solemn funeral. Meanwhile, the fame of holiness which Michael had acquired during his life, after his death, has increased and continues to grow more and more each day. Wherefore, after an Ordinary Process was prepared, adorned with the aforementioned fame, in the ecclesiastical court of Bayonne, and presented to the Congregation of Sacred Rites, and after the Apostolic dispensation has already been obtained, both from the intervention and vote of the consultants, and after the lapse of ten years, at the request of the present promoter of the cause, the Reverend Father Mauro Maria Kaiser, of the Order of Preachers, and also of the Reverend Bishop of Bayonne and the entire sodality of priests of the Most Sacred Heart of Jesus, and after considering many petitionary letters from the Most Holy Roman Church.

[*Latin ed. p. 60*]

60 From the Sacred Congregation of Rites, from the Most Reverend and Eminent Cardinals, Sacred Prelates, Superiors General of Orders or Religious Congregations, and other persons of ecclesiastical or civil distinction, the Most Eminent and Reverend Cardinal Caietanus Aloisi-Masella, Relator in this cause, in the Ordinary Session of the aforementioned Sacred Congregation, held on the date indicated at Vatican, proposed the following question for discussion: "Whether the Commission for the Introduction of the Cause should be signed in the case and for the purpose under consideration?" And the Most Eminent and Reverend Fathers entrusted with the preservation of Sacred Rites, after careful deliberation, and after hearing the voice and written opinion of the Reverend Father John Baptist Lugari, Promoter of the Holy Office, judged it fitting to respond: "Affirmatively, that is, the Commission should be signed, if it pleases the Most Holy [Father]." On May 9, 1899. All of which was reported to the Most Holy Pope Leo XIII by the undersigned Cardinal Prefect of the Sacred Congregation of Rites, and His Holiness, considering the judgment of the Sacred Congregation to be valid, deigned to sign the Commission for the Introduction of the Cause of the Venerable Servant of God, Michael Garicoïts, founder of

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the Congregation of the Priests of the Most Sacred Heart of Jesus, on the fifteenth day of the same month and year.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites.

L. * S. DIOMEDES PANICI, Secretary of the Sacred Congregation of Rites.

FROM THE SACRED CONGREGATION OF THE HOLY OFFICE: QUESTIONS: Do all habitual faculties pass to the successors of the Ordinary in a given number of places?

* Most Blessed Father, by Decree of the Sacred and Universal Inquisition of November 24, 1897, it is established: "All special faculties habitually granted by the Holy See to Bishops and other Ordinary authorities of places, do not cease or are suspended by reason of their death or cessation from office, but pass to their successors in office, according to the form and within the terms of the Decree issued by this Sacred Congregation on February 20, 1888, concerning matrimonial dispensations."

[*Latin ed. p. 61*]

From the Sacred Congregation 61: The undersigned Vicarius Capitularis, with the See of the Diocese of N. N. vacant, in order to remove all doubt and for the tranquility of his conscience, humbly prostrates himself before Your Holiness and requests that he be deigned to declare:

I. Whether, under those words, all special faculties habitually granted by the Holy See to Bishops and other Ordinaries are included, encompassing all special faculties granted by the Holy See to Ordinaries, which they may use whenever they wish, for a predetermined time; such as are the faculties pertaining to the Penitentiary, the reduction of Masses, etc.

II. Whether the faculty of blessing and delegating for the blessing of sacred vessels, which has been granted to Bishops, also passes to their successor, the Vicarius Capitularis, even upon their death or cessation from office, although he is not invested with the Episcopal dignity.

III. Whether, under those same words, all special faculties habitually granted by the Holy See to Bishops are included, even those faculties by which they may only use [the power] for a definite number of cases, such as the faculties of dispensing from the title of sacred ordination, for a defined number of ordinations.

IV. And concerning any of these [questions] that may be answered negatively, what is the meaning of that adverb "habitually"? And God, etc.

On Thursday, May 3, 1899, in the General Congregation held by the Most Eminent and Reverend Cardinals, Inquisitors General in matters of faith and morals, after the aforementioned doubts had been proposed, and with the votes of the Most Reverend Consultors taken into consideration, the same Most Eminent and Reverend Fathers ordered that the following be answered:

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To I, II, and III: Affirmative.

To IV: Provided for in the preceding [answers].

On the following day, Saturday, the 5th of the same month and year, in an audience granted by His Holiness, Pope Leo XIII, to the Most Reverend Father, the Reverend Prelate, Assessor, His Holiness approved the resolution of the Most Eminent and Reverend Fathers.

I. Canon Mancini, S.R. and U.I., Notary.

[*Latin ed. p. 62*]

62 FROM THE SACRED CONGREGATION OF THE INQUISITION: A QUESTION: "Whether the Ordinary of a place can grant a dispensation in articulo mortis from matrimonial impediments to those who have lived in concubinage, and then separated. Most Blessed Father, the Vicarius Capitularis of the Diocese of N. N., prostrate at the feet of the Holy Father, presents the following: By Decree of the Sacred Roman and Universal Inquisition of February 20, 1888, Your Holiness graciously granted the grace that the Ordinary of a place may dispense, either personally or through an ecclesiastical person well-disposed, regarding public impediments to marriage, with those who are in grave danger of death, and when there is no time to appeal to the Holy See, who are joined together according to civil laws, or who otherwise live in concubinage, so that the dying may, in such a time of urgency, be able to be lawfully joined in marriage before the Church and to consult their own conscience. Now, in this city of N. N., some who have lived in concubinage have had children, and afterwards, having left the concubinage, are now gravely ill, and desire to marry the same person with whom they lived in concubinage, in order to legitimize the child, or to repair the woman's reputation or loss, or to remove scandal, or to consult their own conscience. With these things as a preface, the aforementioned Vicarius Capitularis proposes the following questions to Your Holiness: I. Whether the sick who are in danger of death, who actually do not live in concubinage, but who 'lived in it' and had children who must be legitimized, can also be included under the aforementioned Decree of the Sacred Roman and Universal Inquisition of February 20, 1888? II. Whether those sick who are actually not living [in concubinage], but who nevertheless lived in that infamous concubinage, whether or not they have had children, or whether the children have already died, can also be included? And God, etc. Thursday, May 3, 1899. In the General Congregation of the Sacred Roman and Universal Inquisition, after the aforementioned questions were proposed, and after all matters of law and fact were duly considered, and with the vote of the Most Reverend and Illustrious Consultors, it was judged that the Most Eminent and Reverend General Inquisitors

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in matters of faith and morals should respond:

[*Latin ed. p. 63*]

From the Sacred Congregation [Inquisition], 63. Decree, paragraph IV, issued on September 17, 1890, concerning a doubt proposed by the Archbishop of Compostela. Furthermore, this doubt was as follows: "Whether, by virtue of the decrees of February 20, 1888, and March 1, 1889, an Ordinary, either directly or through a parish priest, can grant a dispensation regarding impediments... established in articulo mortis, even if the marriage has not been celebrated civilly, nor are they living in concubinage?" The Most Reverend Fathers responded: "No." On Thursday, May 5th of the same year, the Most Holy Lord Pope Leo XIII, in an audience granted to the Reverend Father, the Assessor of the Sacred Congregation, having heard a report on this matter, approved and confirmed the resolution of the Most Reverend Fathers. I, Canon Mancini, Secretary of the Sacred Congregation and Inquisition, note the following doubt: "Is a valid ordination possible, in which the first and second impositions of hands were omitted, but all other things were completed with the sacramental words, before the delivery of the instruments?" Most Blessed Father, the Bishop N. N., prostrate at the feet of Your Holiness, humbly explains as follows: "During the ordination of a certain priest, approximately four months ago, through inadvertence, both hands were omitted from being placed upon the head of the one being ordained, and the right hand was not extended while reciting the exhortation 'Oremus, fratres carissimi'; all of which was subsequently remedied, and the assisting priests performed these actions, along with the repetition of the exhortation. Now, he doubts whether this was done before the 'Exaudi nos' prayer and the Preface: however, the assisting priest affirms, albeit with some doubt, that the ordained priest performed all of these actions after the words 'Flectamus genua' and before the 'Exaudi nos' prayer. Therefore, the Bishop, for the tranquility of his conscience, humbly requests that he be informed whether he can be at peace, and if not, what must be done?" On Thursday, May 3, 1899. In the General Congregation held by the Most Reverend and Most Eminent Cardinals, General Inquisitors for matters of faith and morals, concerning the aforementioned doubt, and after the presentation of the Reverend Fathers...

[*Latin ed. p. 64*]

64 From the Congregation of the Holy Office, by the unanimous vote, the same Most Reverend and Reverend Fathers were ordered to respond: Provided that, in the case proposed, the repetition of the formula and the double imposition of hands have been performed before the delivery of the instruments, it is permissible. On Thursday, the 5th day of the same month of May, during the usual audience granted by the Most Holy Lord Pope Leo, thirteenth of that name, to the Reverend Fathers, the resolution

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of the Fathers was approved. I, Canon Mancini, Notary of the Holy Roman and Universal Inquisition. DECREE by which it is forbidden in Rome for Superiors to hear the sacramental confessions of their subjects. Thursday, July 5, 1899. It has been brought to the attention of this Supreme Holy Roman and Universal Inquisition that in this illustrious city, certain Superiors of Religious Communities, as well as of Seminaries and Colleges, are hearing the sacramental confessions of their students who reside in the same house. From this, no one who is even moderately versed in the sacred ministrations fails to know how much harm, indeed, how many grave evils can arise. For on the one hand, the freedom of the students to confess their sins is diminished, and the integrity of the sacrament of confession itself is endangered; on the other hand, the Superiors may be less free in the governance of the community, and they are exposed to suspicion, either of using the information obtained in confession, or of showing themselves to be more favorable towards those students whose confessions they hear. Therefore, in order to prevent these and other evils, which can easily arise from such abuse, this Supreme Congregation of the Holy Office, by the express mandate of the Most Holy Pope Leo XIII, strictly prohibits any Superior, whether major or minor, of any Religious Community, Seminary, or College, in this illustrious city, (except in some rare case of necessity, of which he is burdened by his conscience) from daring, in any way, to hear the sacramental confessions of his students who reside in the same house. I, Canon Mancini, Notary of the Holy Roman and Universal Inquisition.

[*Latin ed. p. 65*]

63. The letter which Pope Leo XIII sent to Queen Wilhelmina of the Netherlands (1). "Your Majesty, We cannot but be pleased by the letter in which Your Majesty informed Us of the convening, in the capital of Your kingdom, of a Conference for peace, and who has kindly requested Our moral support for this assembly. We hasten to express Our heartfelt sympathies, both for the illustrious initiator of the Conference and for Your Majesty, who has hastened to offer it support. Indeed, for such a purpose We most readily consent; and We have undertaken to convey to Your Majesty the expression of this Our favorable intention, because of the noble author of this very undertaking (2), and because of Your Majesty, Queen..."

(1) The Most Holy Father Leo XIII responded to this letter from the Queen of the Netherlands with the following: "Most August Pontiff, Your Holiness, whose eloquent words have always risen with such authority in favor of peace, having recently, in Your Allocution of April 11th last, expressed these generous sentiments especially with regard to the relations between peoples, I deemed it my duty to communicate to You that, at the request and initiative of His Majesty the Emperor of all the Russias, I have convened a conference for the 10th of next month in The Hague, which will

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be charged with seeking the means proper to reduce the crushing military burdens currently in place and, if possible, to prevent wars, or at least to mitigate their consequences. I am convinced that Your Holiness will view with favor the convening of this conference, and I would be very happy if, assuring me of this high sympathy, You would deign to give Your precious moral support to the great work which, according to the generous designs of the magnanimous Emperor of all the Russias, will be developed in my Residence. I seize with eagerness the present opportunity, Most August Pontiff, to renew to Your Holiness the assurance of my high esteem and my personal devotion. Lipburg, May 9, 1899. WILHELMINA."

(2) Namely, the Emperor of Russiae.

[*Latin ed. p. 66*]

66. To the honorable establishment, whether for the eminently moral and beneficial purpose to which the endeavors already begun there are directed. For such undertakings, We consider it especially Our role not only to lend moral support, but to cooperate effectively, for it concerns an object of supremely noble nature, and intimately linked with Our august ministry, which, by the divine Founder of the Church, and in virtue of traditions of long standing, possesses a certain high authority as a mediator of peace. Indeed, the authority of the Supreme Pontificate transcends the boundaries of nations; it embraces all peoples, in order to unite them in the true peace of the Gospel; its action to promote the general good of humanity rises above the particular interests pursued by the various heads of state, and it knows better than anyone how to incline so many diverse peoples to concord. History itself bears witness to all that Our predecessors have done, which you have provided as a home for this gathering in your kingdom; and furthermore, because of the outstanding, pious, and salutary purpose for which the studies and labors undertaken for this matter are directed. To promote this undertaking, We consider it Our primary duty to readily lend Our name and authority, as far as they are effective; but also to cooperate effectively, for the matter concerns something supremely noble in itself, and intimately connected with Our Apostolic ministry, which, whether through the divine Author of the Church, or through the most ancient tradition, possesses this endowment, so that he who exercises it is, in a certain way, constituted as the supreme guardian of peace. Indeed, the authority of the Supreme Pontificate transcends the boundaries of nations: it embraces all peoples, in order to unite them in the true peace of the Gospel; and its action, to promote the public good of human society, surpasses the private good that the administrators of any republic are accustomed to care for; and it knows better than anyone else how to lead so many peoples, so diverse

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among themselves, to concord.

[*Latin ed. p. 67*]

Our predecessors strove, through their influence, to mitigate the unfortunately unavoidable laws of war, and even to halt, when conflicts arose between peoples or between princes, all bloody combat; to resolve amicably the most acute controversies between nations; and courageously to defend the rights of the weak against the pretensions of the strong. And We also, despite the abnormal condition in which We are presently placed, have been granted the opportunity to bring an end to serious disagreements between illustrious nations, such as Germany and Spain; and today We are confident that We will soon be able to restore harmony between two nations of South America, which have submitted their dispute to Our arbitration. Despite any obstacles that may arise, We shall continue, since the duty is incumbent upon Us, to fulfill this traditional mission, aspiring to no other goal than the public good, and desiring no other glory than that of serving the sacred cause of Christian civilization. We beseech Your Majesty to be pleased to accept the sentiments of Our particular esteem.

[*Latin ed. p. 68*]

68 LETTER, expressing the sincere wishes that We form for His prosperity and that of His kingdom, may you gladly receive.

From the Vatican, 29th of May, 1899.

Given from the Vatican, on the 29th of May, in the year 1899.

LEO XIII, POPE.

FROM THE HOLY CONGREGATION OF THE COUNCIL OF POLICASTRO.

Of Rights.

29th of April, 1899.

Session 23, paragraph 3.

Session 22, paragraph 3.

Concerning reforms.

COMPENDIUM OF FACTS.

In the diocese of Policastro, there were numerous parish churches, flourishing in resources and clergy, until the year 1867, when the infamous laws concerning ecclesiastical property were enacted, which undermined them. Subsequently, the assets of these churches were transferred to the state, and new ordinations to such congregations were prohibited; and to those

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priests who had already been ordained at the time these laws were enacted, a portion of their income was assigned, under the name of a pension.

However, they were unable to fully effect what the unjust laws had intended; therefore, it was decreed that the bishops should consider these churches as still existing, and should allow other priests to be ordained to the clergy of these parishes.

However, the Ordinary and the clergy themselves experienced difficulties due to the scarcity of resources; for it was a great burden to provide a suitable salary to the newly appointed brothers.

In some churches, the pensions granted by the government were contributed to a common fund, from which both the old and the new priests received equal portions.

[*Latin ed. p. 69*]

POLICASTRO. Sixty-nine individuals were to be included. But this proposal did not please the priests who were granted pensions from the clergy of the Church of St. Nicholas in Bari, in the diocese of Policastro; indeed, although these priests sought to participate in this communion of goods after the confiscation of Church funds, they refused to relinquish the portion of income granted to them by the government, a right they already possessed, and they were unwilling to cede it to others without legal justification. This controversy was immediately brought before the Bishop, who initially seemed inclined to favor the intention of the priests who were not receiving pensions, but he delayed resolving the matter, finally issuing a decree on January 28, 1897, after the following observations:

1. Although the pensions granted for life to priests attached to the Church represent ancient ecclesiastical revenues, at the time when laws of suppression were enacted, the pensioners enjoy a greater right to the full pension because of their possession, which they enjoyed at the time of the suppression: for in a similar case and offense, the condition of the possessor is better.

2. The appellants, although aware that the Church's assets had already been seized, nevertheless sought to be included among the clergy, while others were already enjoying the assigned pension, and they rightly maintain this right because *qui prior in tempore, potior est in iure*.

3. Although civil authority cannot alter the nature of Churches, nevertheless, if circumstances and conditions have become notably different over time and in different places, even the statutes of the clergy must be modified; as an example, the Sacred Congregation of the Council gave in the case *A* on September 19, 1885.

4. The pension, although small, takes on the nature of support, and it would be ridiculous if it were subjected to division and subdivision due to the death of pensioners and the entry of other priests.

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5. The Sacred Congregation of the Council, considering these and other just reasons in a general decree of February 22, 1876, regarding the question: "Whether and how those who, after the alleged suppression, are co-opted by letters from the Bishop into a collegiate chapter or into the clergy, are to participate in the revenues which, under the title of a vital pension, are paid to individual chapter members or participants by the treasury," answered: "Generally,..."

[*Latin ed. p. 70*]

70. Concerning the negative pronouncements of the Holy General Council. 6°. Priests who are not receiving pensions, even though they are not obligated to assist others in functions pertaining to those same pensions, ought to be present at the functions for the splendor of the Church, and they cannot perform any function separately from the others. Therefore, considering all of the above, the Ordinary rejected the petition of the priests who are not receiving pensions in the Church of Lauria. Some have opposed this decree; others have instituted a cause for judgment before the Sacred Congregation, in order to obtain the revocation of the Episcopal decree; and under this form of petition, the case is presented today, namely: "Whether the decree of the Bishop ought to be confirmed or annulled in this case."

Synopsis of the Discussion. The priests who are receiving pensions, through their procurator, state that the laws sought to completely abolish and remove the ecclesiastical benefices. However, the procurator says that, in this injustice, the legislator proposed only one thing that was equitable, namely, that those whom he found in possession of the fruits of the ecclesiastical benefices should not suffer any detriment. Therefore, he established an annual income that would equal the fruits that they were losing. However, in order that their situation might not be improved, he added the condition, "provided that they continue to fulfill the obligations attached to those institutions." No mention is made of the clerics who, after that time, would be received into the ecclesiastical benefices. Indeed, it must be said that the legislator did not even consider them. For, if he wished the ecclesiastical benefices to be abolished, he also wished that no one should be assigned to them in the future. Therefore, if we consider the law, certainly no right to pensions pertains to those priests who, after the ecclesiastical benefices were taken over by the secular power, came into possession of them. Indeed, the advocate readily concedes that this law is unjust and does not establish any right, but he says that it is not within our power to abolish the law, or to remedy its injustice. The pensions that are paid by the treasury, if divided, will, after a few years, benefit only the

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very old.

[*Latin ed. p. 71*]

POLICASTRO. To all the priests, having completed their service, there will no longer be any pension to be divided and subdivided. Meanwhile, those, already weakened by old age and infirm health, will be deprived of the necessary means of sustenance. It is believed that this has come about because the Sacred Congregation of the Council, although from the beginning, after the abolition of the collegiate chapters and benefices, decreed through published instructions that pensions should be contributed to a common fund; yet, at the same time, it granted bishops the power to prohibit the reception of any cleric into those churches in the future. Not long after, upon the complaints of priests to whom pensions were paid from the treasury, the same Congregation repeatedly responded that they should not be disturbed. Finally, on February 22nd of the year 1876, it issued a general decree: "To resolve the doubt: Whether and how those who, after the supposed suppression of a collegiate chapter or benefice, are admitted by letters from the bishop, are to participate in the revenues which, under the title of vital pension, are paid by the treasury to the individual chapter members; it responded: Generally speaking, negatively." Then, the author notes that among the clerics admitted to benefices, not a few, after the suppression, shared the pensions with newly arrived clerics; some even shared, but with the condition that no further clerics be admitted; the rest completely refused to share the pensions; these are, besides the clergy of Saint Nicholas in the town of Lauria Superiore, about whom we are speaking, the clergy of Saint James in Lauria Inferiore, and the clergy of the towns commonly called Lagonegro and Rivello. However, there is no reason, especially after the publication of the general decree "To resolve the doubt," why these should be compelled to do what other diocesan clergy have done. Nor can this reason be found in the fact that the clergy of the Policastro diocese are numerous. For the decree "To resolve the doubt" does not distinguish between numbered and unnumbered clergy; and therefore, it applies to both. Furthermore, it is reported that thirty-one years have been completed.

[*Latin ed. p. 72*]

72 FROM THE HOLY GENERAL COUNCIL, from which the law concerning pensions was enacted: of the priests who, at that time, received pensions from the treasury, and who numbered forty-four, only nine remain; the rest have been taken by the common fate; the priests who receive no pensions from the treasury number fourteen, and their number, as nature permits, diminishes daily; the number of those who do receive pensions diminishes daily. If pensions are granted, a great injustice will be done to those who, for so many years, have possessed them, and who, especially

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now, in their old age, need them to support themselves; to these younger and stronger priests, a small and temporary benefit will accrue. Furthermore, the lawyer points out to these priests who do not receive pensions that they entirely lack any compensation for their labors. For there are certain revenues which have been subjected to the rapacity of the treasury; these are divided equally among all the priests devoted to the Church. Moreover, and this is of greater importance, the parish of Lauria is widely extensive, and no small revenues are derived from it; and, as is fitting, even the priests who do not receive pensions are called upon to contribute to these revenues; thus, it cannot be said that these are entirely deprived of the means necessary to sustain life. But those who receive pensions bear no burdens of this kind; this is confirmed by the authentic testimony of the Provincial General of the curia of Policastro, dated March 31, 1898. But the opponents bring forward a certain deliberation, in which the clergy of Lauria were assembled in a meeting held on December 19, 1872. To this assembly, the speaker continues, only a few, not all, of the participating priests were present; for from the very deliberation itself, we have that the assembly was held "with the presence of the Reverend Archpriest, the Cantor Vitarella, and the Vicarious Alagia, and a sufficient number of priests participating." Of those who were present, only two remain, namely, the priest Crescentius Marotta, and the Abbot Mathias Forestieri; for the rest, all those who are now petitioning that their pensions be preserved to them, were not present at the assembly.

[*Latin ed. p. 73*]

POLICASTREN. 73. Moreover, according to the patron, in that assembly, no action was taken regarding pensions to be shared by the priests after the dissolution of the clergy, except those exempt; but rather, concerning a completely different matter. For, as the advocate recounts, the priests of the church of Saint Nicholas in Laurentia came, hoping that, in the general division of the assets of that church, some portion might be preserved for them, which would perpetually serve to pay debts owed to others and to cover the expenses of worship. Therefore, they decided to petition the treasury, so that this portion of the assets might be separated from the rest of the assets that were to be made public. Since, according to the law in force, one archpriest, who was responsible for the care of souls, would remain; in order that this one person might not administer this income and expend it at his own discretion, it was decided, on the other hand, that this same income should be administered by all the participating priests, either by themselves or through a procurator elected by them. Indeed, the speaker insists, in this arrangement, not a single word is found that could refer to pensions or their distribution. On the contrary, everything seems to indicate that those who made this arrangement did not make any provision whatsoever regarding pensions, nor did they even consider them. They

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say: "before the fatal decree is compiled and presented, a similar request must be made." Therefore, they are speaking of an income, which it was necessary to reserve or to request before the division of the assets, and which cannot be applied to the individual pensions of the priests. For pensions are established by the law itself, and it is not within the power of the treasury to grant them or to deny them, nor is the right to them lost, unless they are requested before the division of the assets. Those deliberating state that the petition they are considering should be made through the deduction of liabilities and through a special allocation for the expenses of worship, and shortly thereafter they say: "the aforementioned allocation for the expenses of worship or for any liabilities whatsoever." The patron insists: these words clearly cannot refer to pensions, which are not intended to pay off debts or to cover expenses.

[*Latin ed. p. 74*]

74. Concerning the expenses of the cult, which are to be borne, they were assigned by the legislator, but for the sustenance of the priests who participate [in the cult]. For if he had wished to provide for the cult through them, he would have established them as perpetual [contributions], as he stated in the chapters concerning cathedral churches: whose goods are subject to the treasury, yet according to that law, so that twelve canons and six prebendaries might perpetually receive their stipends. They [the canons and prebendaries] are subject to this [law] in such a way that it has come to be understood. And these words, according to the speaker, cannot be adapted to pensions: for it cannot be uncertain concerning those to whom the name of each participant is assigned. Therefore, if those who were consulted about this matter were ambiguous, it is clear that they were consulted about something else, not about pensions. But the matter concerned such a revenue, which was to be formed from a portion of the public patrimony, to sustain the expenses; it was not about pensions, which, according to the law, were to be provided from the entire ancient revenue, with only expenses deducted. Finally, the patron [of the church] completely rejected the interpretation that his clients wished to give to the matter, because they had always objected to contributing pensions to the common fund, and they resisted even the exhortations of the modern Bishop, who had tried in every way to persuade them to do so during the year 1873. The Policastro court, in its judgment, distinguishes between those sacred [funds], which are established in the church of St. Nicholas through pious bequests of the faithful; and those sacred [funds], which are customary in all churches to which some clergy are attached; to which, in the church of Lauriano, the will, donation, or testament of any private faithful should not intervene: only the priests to whom pensions are assigned from the treasury are burdened with these [funds]; it commands that all priests who are attached to that church should participate in these [funds]; if the judgment

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of Policastro is maintained, the first [funds, i.e., the pensions] will cease with the cessation of the pensions; but the second [funds] will remain forever; if the judgment is overturned, after a few years.

[*Latin ed. p. 75*]

POLICARTBEN. For seventy-five years, no sacred functions whatsoever have been performed in the church of Lauri. The lawyer concludes. RIGHTS ARE NOT FOR PENSIONERS. On the contrary, priests who do not receive pensions point out that the Bishop's decree, which has been published, was issued without hearing the parties involved, and indeed, contrary to the intention of the parties who had invoked the Bishop himself, as an arbiter of the matter. With regard to the merits of the case, they cite the rule of law quoted by the Bishop in favor of the opposing party, namely, that in a similar case, the condition of the possessor is better, which does not apply to this case, because these individuals have never had peaceful possession, which they obtained not only against the will of the law, but also against the express intention of other priestly brethren. Indeed, the Bishop himself approved their line of action in letters dated October 13, 1875, addressed to Father Joseph Calcagno, who had repeatedly criticized their sharing in these revenues. Indeed, the Sacred Congregation of the Holy Office has repeatedly responded in such a way that it fully appears to have confirmed the Bishop's previous opinion and the current appeal. For it should be noted that the Sacred Congregation of the Holy Office has examined similar questions on several occasions, and under various aspects, but it has always affirmed the same principle, namely, that seizures by the tax authorities do not constitute rights, but rather acts, namely thefts, which are in no way suitable for changing the legal constitution of things. Therefore, the revenues can be significantly reduced by the tax authorities and even reduced to the point of ruin, but the tax authorities cannot change their destination. From this, a constant and clear jurisprudence of the Sacred Congregation of the Holy Office has arisen; provided that definitive judgments have been rendered in accordance with this rule, as in Theanen, regarding the adjudication of revenues on June 8, 1880; in Parma, regarding the distribution on June 26, 1886; and also in Cuneo, regarding the adjudication of revenues on May 30, 1892, and in Aquipendium, regarding the adjudication of revenues on January 24, 1894. As another example, in Theanen, this is the factual situation: 26 canonries, which were united into that chapter, were reduced to 12, and furthermore, sub-

[*Latin ed. p. 76*]

76. From the acts of the Holy General Council, concerning certain pious endowments, a tax of 30 per thousand was levied. Subsequently, after a partial restitution of the revenues of this tax was made, a question arose

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among eight poorer canons, who approved and accepted the distribution of income made by the Treasury, and four others who disapproved of this division, considering it to undermine the legitimate order of endowments. This question was presented to the Sacred Congregation with the following doubts: I. Whether the restitution of that portion, which the government had previously deducted as a tax of 30 per thousand, should be ceded in favor of all the canons, or rather, only of the eight in this case. II. Whether the fruits of the same portion, accumulated from the year 1873 to the year 1886, which the government recently restituted, should be divided among all, or rather, only among the eight in this case; and the response was: Regarding I, affirmative to the first part; negative to the second part; regarding II, affirmative to the first part, in proportion to what is due to each, negative to the second part. In Parma, in a similar case, the Sacred Congregation granted the canons the right to maintain the new distribution of income introduced by the Treasury, but only "for the sake of charity, with the permission of the Most Holy." In Cuneo, the following question was proposed: "Whether and how the sum assigned by the Treasury for the partial restitution of the canons of Chisolfi and delia Chiesa should be divided between the endowments of those canons and the common distribution fund." The Sacred Congregation responded: "Affirmatively, in proportion to the damages, both for the endowments and for the fund." Furthermore, the archpriest, attesting under date of November 30, 1897, testifies that "the priests of this church, who do not receive government pensions, have always, and still do, diligently perform their duties, such as the processions of the Body of Christ, Rogations, etc." And in this way, even the non-pensioned priests contribute a small portion of their income to the common fund. Because they no longer perform functions...

[*Latin ed. p. 77*]

POLICASTREN. Seventy-seven priests, beneficiaries of stipends, who exclusively receive these benefits from the Government, state that within the very bosom of the Church, a shameful division has been created, namely, between two classes of clergy, a division which, they assert, is contrary to common law and to the constitutions of this Church, and is all the more to be condemned because it originates from a usurping Government, which, therefore, no Bishop could in any way ratify. They claim that the response of the Sacred Congregation, invoked by the Bishop, has been presented as a fundamental law for countless parish churches, which possess true endowments, and therefore, it does not apply to the numerous churches which have no endowments. Finally, they appeal to a matter entirely specific to them, namely, to the agreement initiated on December 19, 1872, the text of which we have already presented. The intention of this agreement, if the appellants are to be believed, is of the utmost clarity, provided that all revenues derived from the Treasury have been included in the agreement.

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Indeed, it is expressly stated that all revenues are to be common in the future, just as they were originally, from which revenues they are derived; therefore, it is clear that the intention of the negotiators was to preserve the character of the Church, which possessed all its goods in common, and whose revenues were shared equally among the clergy. Regarding the jurisprudence of the Sacred Congregation, which we have presented to explain the intention of the appeal, it is important to note that the cited decisions refer to cathedral and collegiate churches which possess legitimately established endowments, the titles of which remain valid, and the loss or seizure of their revenues constitutes a violation of their endowment. Therefore, the titular clergy of these benefices, even if all revenues are seized by the Government, nevertheless retain the full right to receive them in the same measure and quantity as before. Conversely, this does not apply primarily to parish churches, especially those located in the regions of the former Kingdom of Naples.

[*Latin ed. p. 78*]

78. From the deliberations of the Holy General Council, the Brief "Impenso" is cited, by which Pope Pius VII ordered that the number of participants be reduced or determined, lest the individual portions become illusory. – Indeed, in these Churches, there are not as many benefices or prebends as there are participants, but rather a common fund, in Churches with a fixed number of members, to be assigned to a specific number of clerics; in Churches without a fixed number, to be distributed to clerics in an uncertain number. This is done according to the amount of revenue. In Churches with a fixed number, the Church from which the members come is designated. And the Brief "Impenso" was considered by the Sacred Congregation of the Council in the case of Andrien, on September 19, 1885, concerning the place "Minervino Murge." The matter concerned six priests who sought participation in the pensions received by the Canons from the Treasury; and regarding the doubtful proposition "Whether the sentence of the Episcopal Curia should be confirmed or rejected in this case," it was decided "to adhere to the decree of the Bishop of December 22, 1883, and in accordance with the intention [of the Brief]." The intention is that new statutes be established in accordance with the Brief "Impenso" and according to the will of the Bishop; so that two-thirds of the revenues begin to accrue to a special fund for the new beneficiaries from the day that individual canonries and individual participations are first vacated. Finally, it should be noted that in the rescript of February 22, 1876, cited by the Bishop in his decree in response to the request, certain words were desired to be expressed to the Holy Office; and the response was "Generally speaking, negatively, but the particular cases should be considered." With these observations in mind, the proposition was to resolve the doubt "Whether the decree of the Episcopal Curia of Policastro should be confirmed or rejected

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in this case." RESOLUTION. The Sacred Congregation, after deliberation on April 29, 1899, decided to respond: The decree is to be confirmed.

[*Latin ed. p. 79*]

79. PARIS. MATTER OF MARRIAGE DISPENSATION. March 18, 1899. Session 24. Chapter 5. Concerning the validity of marriages. SUMMARY OF THE CASE. In the parish church under the title of Saint Aloysius of Antin, in the diocese of Paris, Joan, then 27 years of age, on March 14, 1896, validly entered into marriage with a certain Eugene, a lawyer, aged 38 years. The day after the wedding, the spouses attempted to consummate the marriage, but it appears that the marriage was not consummated, and although they made repeated attempts, the spouses assert that these attempts always failed. However, in assigning the cause for the lack of consummation, the spouses do not agree; for the woman attributes it to the impotence of the man, who was suffering from a venereal disease, while the man accuses his wife of a lack of will, who always refused to fulfill her conjugal duties in order to avoid having children. Subsequently, disagreements arose between them, and the man abandoned the marital home, never returning, and brought Joan before a civil court, seeking a divorce decree, which was indeed granted in favor of the woman. Meanwhile, the woman, hoping to obtain freedom also before the Church, at the advice of the Curia of Paris, sent a petition to the Most Holy Father, requesting that her marriage bond be dissolved, since it remained only valid and not consummated. The Archbishop of Paris, to whom the petition was referred by the Holy Congregation, arranged for a process to be conducted by a delegated judge, and having transmitted the proceedings to Rome, he informed the Holy Congregation that: "From these facts, it is clear that the marriage was not consummated. A certain man was specially recommended to us by the Reverend Archpriest of the Metropolitan Church. We believe him to be impotent. The wife, although..."

[*Latin ed. p. 80*]

80. "The Council of Trent has decreed that [cases] in which the marriage has not been consummated should be considered sufficiently grave and serious, so that [we] should not grant [them] the benefit of the law." *Disputatio Synoptica. DEFENSIO MULIERIS.* The advocate for the actress, who seeks to prove the lack of consummation of the marriage, notes that all the arguments and evidence converge, according to the common doctrine of canonists and accepted jurisprudence, which are required to establish moral certainty regarding the absence of consummation in such cases. And first, he proves this from the sworn testimony of the spouses. Indeed, the woman testified: "From the first night, Monsieur P. tried to become my husband, but in vain; he tried again on the following days, and quite often during the twenty-one days in which we lived together and shared the

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same bed; but it was always without the slightest result. Yes, I formally affirm that there was no consummation. I agree to provide proof of this by submitting to a medical examination." The man affirms the same, stating: "I swear before God that the marriage has not been consummated." When asked by the judge about the cause of this lack of consummation, he added: "Madam accepted caresses and embraces very well, but as soon as it came to the conjugal act itself, she abruptly evaded and pushed me away." However, if the spouses are in disagreement in assigning the cause of the lack of consummation, accusing each other, this, according to the advocate, does not affect the substance of the matter. For, he says, it is sufficiently understood that the assertions concerning the cause of the lack of consummation have come from the mouth of the man, namely, in order to conceal a defect of virility, to avoid ridicule, and to protect his own honor. Furthermore, the advocate observes that the disagreement between the spouses in assigning the cause of the lack of consummation is not without some benefit to our case, insofar as it helps to exclude collusion, since they agree in seeking a dispensation.

[*Latin ed. p. 81*]

The Parisian lawyer proves the same point through the testimony of witnesses under oath; indeed, all the witnesses, both those presented by the prosecution and those presented by the defense, of considerable integrity and some distinguished by priestly dignity, unanimously testify not only concerning the religion and fidelity of the spouses, but also demonstrate their own conviction that the marriage was never consummated. Certainly, the orator's mother firmly maintains that the marriage was not consummated due to the husband's impotence, which she believes is attributable to an old syphilitic disease. Madame Juliot testifies that, two months after the marriage, the actress repeatedly declared to her that the marriage remained unconsummated due to the husband's impotence, adding: "I am convinced of the sincerity and honorability of Madame Jeanne." Furthermore, and others omitted, the same is affirmed by the parish priest Hurteaux, who states: "Yes, personally, I am convinced that the marriage was not consummated, because these ladies [the actress and her mother] affirmed it to me at a time when I had no reason to suspect them... It seems to me that if there is any responsibility, it belongs to the husband, because a friend of Mr. P. told me that a certain number of his friends considered him to be impotent. He had lived a lively life, had traveled a great deal, and now he could no longer... moreover, he was interested in maintaining secrecy in order not to admit his impotence." The lawyer observes that the women witnesses brought forth by the husband fully corroborate each other. Certainly, Anna Braun, a servant of Mr. P., questioned by the judge as to whether she knew anything about the non-consummation of this marriage, confesses: "Yes, it is my conviction that the marriage was not consummated. Madame P.

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does not love her husband, and it is to her that the responsibility for the non-consummation is attributed. On the first night, she did want [it], since her husband approached her three times; but afterwards, she no longer wanted [it]." The same was testified to by Dominic George Rocher: "For me, based on all the confidences I have received, I have the conviction that the marriage..."

[*Latin ed. p. 82*]

82. "The marriage has not been consummated." Thus, the Lord Arfridus Bonneau, a friend of the man, testifies, having learned from the mouth of the priest himself that the marriage was not consummated. Furthermore, it is unnecessary to dwell on the testimony of witnesses, since there is a clear physical argument available, namely, the examination of the body of Joanna by two physicians, in accordance with the instructions of the Sacred Congregation. Indeed, Doctor A. Ferrand, under oath, testified: "The examination of the genital organs yielded the following results: The labia majora, when separated, reveal the vaginal opening, of restricted dimensions, which is closed by an intact hymen, with a central opening and slightly thickened edges, but without any trace of rupture." From this, he concludes: "That, certainly, the act of marriage has not been consummated." This testimony is corroborated by another judicial expert, Boucquoy, who, after a prior examination of the woman, affirms under oath: "The absence of any trace of tearing of the hymen, or of scars; the conditions of narrowness and resistance of the vaginal walls, seemed to me to be consistent with what this young woman had told me about the relations she had had with her husband; from which I conclude that there have not been, between the two spouses, conjugal relations properly established, and that there is every reason to believe that the marriage has not been consummated." As for the causes for a dispensation, the defender states that the first and most serious is the probable impotence of the man for coition, since there were clear indications of this serious impotence. Indeed, the woman stated: "He was incapable of having almost any erection. He asked me to excite him with intimate caresses, and when he approached me, the erection ceased immediately, the ejaculation was instantaneous and preceded the penetration." However, the impotence of the man constitutes a very urgent reason for a dispensation (cf. Card. De Luca, *Matrim. iudic.*, par. 2, disp. 1, n. S). The defender also adduces another reason, namely, the mutual consent of the spouses in requesting a dispensation, in which case, canonists...

[*Latin ed. p. 83*]

PARISIAN. 83 commonly teach that any reason, however slight, may be admitted, provided it is not incongruous; Cosci de separ. thor. lib. A, cap. 16, n. 29. Indeed, the man even requests a dispensation, saying: "I

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ask, for my own sake, for a dispensation from the marriage." Finally, he adduces a third reason, namely, the aversion of the parties, with no hope of reconciliation, which is certainly considered a very serious reason for granting a dispensation. Indeed, Joan, when questioned by the judge as to whether she would consent to resuming marital relations, replied: "Now it is impossible to resume the common life; the divorce has been pronounced, and, moreover, the situation remains the same." The man affirms the same, confessing: "Reconciliation is now, and more than ever, impossible." To all this is added the danger of incontinence, in which the unfortunate woman, still young and desiring a stable life, finds herself. This is further aggravated when one considers the serious situation in which she finds herself after the civil divorce has already been pronounced.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND.

On the contrary, the Defender of the sacred bond, by virtue of his office, after recounting the facts, first asserts that some agreement existed between the parties, from which it is easily suspected that the spouses conspired with each other and sought to commit fraud against the sanctity of the sacrament. However, he has not found a copy of this agreement in the records; but he presents the testimony of Paul's mother, who, when questioned by the judge: "Was there a civil divorce? From what date was it pronounced, in favor of whom, and for what reasons?" replied: "Yes, it was pronounced towards the end of 1896, in favor of the woman. She had only agreed to file her request on the condition 1. that the divorce would be pronounced at the fault of the husband; 2. that he would pay the expenses; 3. that he would pay the costs of the annulment of the religious marriage; 4. that he would deposit, for this purpose, a sum of fifty thousand francs (50000), which was in reality deposited with Mr. Hyver, a notary in Paris." Furthermore, addressing the merits of the case, he first...

[*Latin ed. p. 84*]

84. Ex S. Concilii decreto, non valet testimonium coniugum, si hoc testimonium de inconsummatione est; quandoquidem, si isti in depositionibus suis non concordant, ita ut dicendum sit vel utrumque, vel alterutrum periurasse. Re vera, Paulus iurat: "Tentatives fuerunt frequentes, et praesertim nocte prima, trino modo repetitae. Domina caresses et oscula benigne suscepit, sed cum ad actum coniugalis propriamente perveniebatur, subitus repente se abstrahebatur et me vertiebat. Hoc attribui ad effectum nervosum ex parte sua, sicut ipsa mihi confitebatur." Et addit: "Sum absolute certus quod illa non voluit liberos habere; ipsa mihi hoc formidine dixit, et persuado quod ad hoc ut liberos non haberet, systemate recusabat actum matrimonii perficiendum." Contra, Ioanna, iuramento pariter obstringa, affirmat: "Cum Mr. P. et ego simul fuimus viginti et unum dies. Inter hos

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dies, cubiculum et lectum communes habuimus. Ab ipso die, maritus meus conatus fecit ut officium coniugale adegeret. Ego sine ulla difficultate ad hoc consentivi; sed effectus semper fuit negativus; maritus meus nihil adactus est. Maritus meus numquam potuit succedere in conatibus ad coniugium consummandandum. Quaepe erat in ipso, ut paene nullam erectionem haberet... Maritus meus sibi ipsum culpam tribuit, sicut mihi dixit. Ego ei interrogavi si hoc a me dependeret: Non, respondit mihi, hoc non a te, sed a me est." Ex quibus, arguit orator, testes qui repugnantia loquuntur, dubio procul a veritate declinant. Nec, iuxta defensorem vinculi, multi faciendum testimonium septimae manus, quandoquidem considerandum est illosmet testes qui ad sidera tollunt honestatem et religionem unius coniugum, inter fabulas amandare quae alter coniux iureiurando affirmat. Re vera, Ioanna, quoad obsequia coniugalia, ut vidimus, iurat: "Jem'y suis prêtée sans aucune difficulté... Il était..."

[*Latin ed. p. 85*]

PARISIAN. "85 incapable of having almost any erection," and in order to deflect blame for the disruption of conjugal life, she swears: "Upon his return from Ardennes, after the Easter holidays, instead of returning to the marital home, my husband went to his bachelor apartment; he had returned a few days prior when I learned of his return."

Indeed, Alfridus Bonneau, a witness summoned by duty, affirms: "I am certain that Mr. P. did everything he could to consummate the marriage, and that he is capable of fulfilling the duties of a husband. It was his wife who refused to cooperate. She declared to her husband that she did not want to have children. Mr. P. never had a reputation for being impotent; before his marriage, he had a relationship that lasted five or six years." And concerning the disruption of conjugal life, he states: "The de facto separation occurred as a result of the young woman's refusal to follow her husband to Charleville. Upon his return, he had informed his wife. He did not find her at the station. He called me to him, on Notre Dame des Victoires Street, at his office."

Similarly, the jurist Rocher, a witness summoned by duty, affirms under oath: "I have known Mr. P. for a long time, and he has never been considered impotent. Moreover, I have known him to have relationships that sufficiently attest that he is not impotent."

The same is affirmed by other witnesses brought forth by the husband, who are working to demonstrate the husband's ability to have intercourse, and that the woman has obstructed the marriage in order to avoid having children.

Conversely, witnesses brought forth by Joanna affirm the contrary; and they attribute the blame for the lack of consummation and the discord to the husband.

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Therefore, the defender of the marriage observes that, just as spouses who are useful to the judge present themselves, contradicting the truth, so too, witnesses, unconcerned with the truth, report to the judge those things that please the spouse who brought them forth.

Furthermore, the defender believes that the physical argument should also be dismissed. For, first of all, he notes that even the doctors who examined Joanna's body are not certain about...

[*Latin ed. p. 86*]

86 KX The physical examination concerning the virginity of Saint Joan. Furthermore, the examining physician, Monsieur Buequoy, arrived at this conclusion: "I conclude that there were no regular conjugal relations between the two spouses, and there is every reason to believe that the marriage was not consummated." Subsequently, the examining physicians, while testifying to the integrity of the hymen, assert something contrary to the truth. For Saint Joan herself, with her own mouth, clearly affirms under oath: "I must add that Monsieur P. introduced his finger into me five or six times. The first time, in particular, I felt a certain pain, and I observed that the introduction of the finger caused a little blood." Moreover, it is added that the examining physicians, satisfied with the assertion of the hymen's integrity, did not at all consider the other parts of the woman's body, which should have been thoroughly examined. Furthermore, the speaker continues, nothing certain can be affirmed about a woman's physical virginity based solely on the integrity of the hymen. For Zacchias, in book 4, title 2, question 1, number 28 and following, teaches: "Concerning the integrity of the hymen, even if a woman is corrupted, it is evident through those things which I have said previously about the imperforate: for a virgin can be defiled, indeed, she can even conceive, without the hymen being broken, as some of the aforementioned authors conclude." And among the more recent authors, Doctor Mahon in the work "Medicina legale e Polizia medica," Milan, in the year 1804, volume 1, page 102, and also Petrus Budin in "Ostetricia e Ginecologia," Paris, 1886, state this more clearly. Moreover, according to the defender of the bond, there is no just cause for a valid dispensation. Indeed, the actress's mother testifies: "There was no scene. He (Lewis) went back into his study, I don't know for what reason. They had previously lived in perfect harmony, and seemed very happy." To which, if the objection is raised that a divorce was requested by the spouses from a secular tribunal and obtained, the speaker responds with the words of Innocent III in chapter 14 concerning usury (there): "He who commits an injustice invokes the aid of the law in vain." With these observations, the purpose to be elucidated is this.

[*Latin ed. p. 87*]

87. PARISIEN. Question: Whether it is permissible to request from the

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Most Holy [See] a dispensation from a valid but unconsummated marriage in a certain case. RESOLUTION. The Sacred Congregation of the Council, having discussed the matter on March 18, 1899, decided to respond: Affirmative. VALLISOLETANA DISTRIBUTIONUM. On April 29, 1899. Session 24, chapter 12, Concerning reforms. COMPENDIUM OF THE AGREEMENT. - In the Cathedral Church of Valladolid, a Canon, who, by virtue of his office, interprets the Sacred Scriptures for the purposes of common law, enjoys a fictitious presence in the choir, even though the choir does not participate. This is expressly stipulated in the Capitular statutes. In the same church, some years ago, a custom arose, but the records do not indicate the beginning of this custom, nor how the extension of this privilege was made, either in terms of time or of persons. - Indeed, it became customary for a sermon to be given on Sundays and feast days, and on Fridays throughout the entire season of Lent, either by one of the Canons or one of the Beneficiaries, according to a certain order. - These individuals, as a reward for their labor, enjoy the grace of preaching, or the indulgence from being present in the choir, for the entire week, except for one canonical hour, which must be observed before the feast day sermon. - Therefore, the Canon himself makes use of this indulgence, according to custom, and to a much greater extent than what is granted to him by the statutes. However, several Canons, doubting whether such a custom should be approved, appealed to the Holy See to have the question resolved. - Meanwhile, the orators did not expressly repro-

[*Latin ed. p. 88*]

88 From the Sacred General Council, this custom was approved, but it is reported that some abuses have arisen therefrom: the petition reads as follows: "The Dean and Chapter of the cathedral church of the metropolitan see of Vallisoleti in Hispania, with due humility, present themselves before Your Sanctity and state: 'For some years now, it has been customary in this church to hold a sermon during the sacred Office, on all Sundays and feast days, as well as on Fridays throughout the entire season of Lent. To fulfill this duty, the Magisterial Canon preaches twelve sermons for the people, a Theological Canon four, another Canon six, and two Beneficiaries six. Those who are not required to preach by virtue of their office are, by others, namely, Canons and Beneficiaries, with a most commendable zeal, and also by the clergy of the city, given sermons. According to the statutes of this holy church, the Magisterial Canon is present only on the day of his sermon in the choir; and nevertheless, the Magisterial Canon and the others, namely, the Canons and Beneficiaries, who are bound by the law of residence, do not attend the choir throughout the week, except for one hour of canonical time, before the sermon, whether it be an official sermon or one given out of love for God. 'But since some of the Chapter believe that their absence from the choir, solely for the purpose of preaching, is not sup-

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ported by any canonical sanction or provision, and that such permission no longer pertains to divine matters, but also that many of the church's works, for example, those which the Chapter is obligated to undertake through its secret secretaries, scriptors, and masters of ceremonies, are often neglected, considering their own peace of conscience, they humbly pray that Your Sanctity would deign to declare: '1. Whether Canons and Beneficiaries, bound by the law of residence, may be absent from the choir for more than three synodal months, and without prejudice to the distribution [of duties], solely for the purpose of preaching, throughout the entire week preceding the sermon, except for one hour of canonical time; and to this end, we ask that it be affirmed: '2. Whether the Magisterial Canon and the others, namely, the Canons and Beneficiaries, who are specially appointed to preach..."

[*Latin ed. p. 89*]

In VALLISOLETANA, eighty-nine [clergy members] perform the office, who, as they say, can invoke the grace of preaching, that is, they are excused from the choir for the entire week preceding the conciliar day, except for one hour daily at canonical hours. *Disputatio Synoptica*. WHAT FAVORS THE CUSTOM. - "The Most Eminent Ordinary states, having carefully read the exposition of the Dean and of some canons of our metropolitan church, and having meditated upon it for a longer time, that I believe it is better and more fitting not to change the ancient custom, but rather to respectfully request, if it should be necessary, an indulgence or grace for the canons and beneficed clergy who preach in the aforementioned church."

"To affirm this, I rely on the following reasons of law and equity. The Holy Council of Tridentini (Session XXIV, chapter 4) states: - 'The duty of preaching, which is the principal duty of Bishops... The Holy Synod decrees that in their own churches, the Bishops themselves, or if they are lawfully hindered, by others... on all Sundays and on the more solemn days of feasts.'

From this, it follows: 1. In Cathedral churches, for indeed the words say 'in their own churches,' the law of preaching must be observed above all on all feast days and on the days of fasting enumerated therein. 2. It is most fitting for the Bishop to commend this preaching in the Cathedral on all feasts. 3. Cathedral churches, in which preaching is not held on these days, should not be imitated by the Church of Vallisoleti, in which conciliar sermons are held according to the norms of Tridentini. 4. It is not permissible for the Prelate to cooperate in extinguishing this ancient practice in his own Cathedral church. And in truth, the ancient custom of preaching on all feast days would be extinguished in this venerable Church of Vallisoleti, if the canons and beneficed clergy were deprived of the grace of being excused from the choir for some hours throughout the entire week preceding their sermon. And, to the great scandal of the people, who from their childhood

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have seen and heard such a practice in this church, would be joined the suppression of many sermons. For this grace or indulgence of the clergy... ”

[*Latin ed. p. 90*]

90. FROM THE DECREES OF THE CATHEDRAL CHAPTER, concerning the sermon to the people, there arises a privilege or dispensation, by virtue of which those who preach are excused from being present in the choir on the very day they preach, and for the seven days preceding, but with the obligation of attending and remaining present for at least one complete canonical hour daily during those days. This grace is often necessary, and always useful, so that the clergy may properly arrange their prayers, and furthermore, it is a fitting encouragement for the priests attached to the cathedral to continue preaching the holy Gospel to the faithful. ”To the Magisterial Canon, to whom it belongs by office to preach, the most esteemed theologians teach that he can safely enjoy this grace, where custom prevails, and there is no reason why this concession should not be extended to other Canons and beneficed priests who preach in the parish church, since all of these, for the most part, have less opportunity and are less readily available to preach before the people on major feasts.” ”For example, let us quote the words of the Most Reverend Fathers of Salmática, most esteemed doctors in moral theology, who, as regular clergy, impartially discuss the obligations of cathedral clergy. In *Cursus de Theologia Morali*, volume IV, treatise XIV on the State of Religious, chapter IV, paragraph 33, it is written: ’One asks: Is the Magisterial Canon, while preaching in his own church, present for the purpose of receiving distributions? The answer is affirmative, because he is fulfilling the ministry of his prebend, which is for the benefit of the Church. Furthermore, by concession of Gregory XIII and declaration of the Cardinals, not only during the hour in which he preaches, but during all the hours of that day, even if he is absent, he is considered to be present in the choir, because he is engaged in a very laborious activity, which especially requires preparation. However, in some churches, the custom prevails that the Magisterial Canon is considered present not only on the day he preaches, but also for the eight days preceding the sermon, because it is considered very necessary that he properly prepare himself for this task, and without excessive fatigue, as is fitting.’”

[*Latin ed. p. 91*]

VALLISOLETANA 91: Hoc convenit, hoc satisfacit; videbitur quid illa consuetudo in usu habeat? Si enim extenditur, ut non solum pro lucrandis fructibus, sed pro distributionibus illis diebus praesens habeatur, hos et illos licite non assistens lucrari poterit; si solum pro fructibus praesens iudicetur, illos dumtaxat, non distributiones lucrabit; in hoc standum

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est consuetudini... « In nostra autem Ecclesia consuetudo vetus est, ut per octo dies et fructus et distributiones lucrentur Magistralis et ceteri Canonici ac Beneficiati praedicantes, absque remuneratione aliqua in Cathedrali, quamvis ad unam tantum horam quotidie praesentes sint choro eo intervallo. « Ad obojectionem quod neglectus appareat tali gratia cultus divinus chori et altaris, facile respondetur. Etenim in hac alma Ecclesia quatuor et quadraginta inter Dignitates, Canonicos et Beneficiatos numerantur; praeterea cantores quatuor et Capellani altari inservientes duo vel tres. Ex tanto numero haud difficulter, sine cultus notabili detrimento, subtrahitur unus aut alter, qui operam det quiete ad laborem concionandi, utique pro maiore cultus splendore diebus festis et pro populi aedificatione. Absque dubio cultus splendor minueretur ex suppressione concionum, quae quidem certa est et inevitabilis, si concionatoribus non datur requies ad praeparationem per gratiam absendi a choro diebus hic consuetis. « Quod attinet ad opera seu munera Canonicorum et Beneficiatorum, qui exercent officia Secretarii, Computatorum, Punctatoris vel Magistri Caeremoniarum, speciosus magis quam solidus est scrupulus. Namque non desunt qui competenter suppleant, vicesque gerant; sunt enim duo magistri Caeremoniarum, duo punctatores, duo computatores redituum et aerarii, et in muneribus ad quae duo Clerici non sunt destinati, nec onera adeo continua sunt, nec difficulter in casu adiuvantur a sociis. Uno verbo quae de Magistrali Canonico dicta sunt, non secus de ceteris etiam dicenda erunt; parque cunctis indulgentia habenda, consue-

[*Latin ed. p. 92*]

92. "From the decrees of the Holy Council, and from those already introduced long ago, it follows, at least in my opinion, that a just conscience must be observed."

WHAT IS OPPOSED TO THIS. But, on the contrary, there are several and not insignificant reasons that seem to argue against such a vow and petition concerning military service. And first, it must be noted that the Ordinary directs the force of his arguments to demonstrate every kind of suitability, utility, and indeed necessity of the use that has arisen in his metropolitan Church, and he often supports this with the name of custom, but he does not prove the validity of this unusual custom with any arguments. Furthermore, since the matter at hand is so grave and so foreign to common law, the Ordinary should have demonstrated the beginning, progress, and outcome of this custom. Indeed, with regard to common law, Chapter 1, concerning Clergy, non-resident, in 6°, which begins, completely condemns and strictly prohibits the granting of customs to canons and other beneficiaries, offices in the churches themselves, concerning distributions; moreover, it declares that those who receive distributions otherwise do not acquire ownership of them, nor do they make them their own, but are bound to restitution. This is stated in the cited chapter by Boniface

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VIII: "We condemn the custom that has arisen, whereby canons... or clergy of cathedrals receive daily distributions (which are now called manual benefits or provisions) in whatever way they may be present in cities or other places... even if they do not participate in divine offices, as if they were continuously serving in those same churches in those same offices, and we decree that the distributions themselves, whatever they may consist of, be given to the canons... of those churches who have been present in those same offices in those same churches... But those who receive anything concerning these distributions otherwise (except for those whom infirmity or a just and reasonable bodily necessity, or obvious benefit to the Church, would excuse) do not acquire ownership of these things, nor do they make them their own, but are, on the contrary, bound to restitution of all..."

[*Latin ed. p. 93*]

VALLISOLETANA received 93 of these requests, and they must be adhered to. Furthermore, the Council of Trent (Session 24, Chapter XII) condemns any custom of this kind, reiterating the prohibition and excluding any collusion or remission. Then, the proofs of the asserted custom, which are requests for dispensation, appear to be entirely devoid of legal foundation. Indeed, with regard to the benefit to the Church, which the Archbishop invokes, it is clear, when considering the intent of common law, that this benefit to the Church is present as a legal reason for dispensation from the choir, which arises from burdens attached to the person in question, or to the Chapter, which exercises its rights through some person. And thus, it is explained how, according to pontifical law, the Theologus Canonicus is considered present throughout the day when he reads (Benedict XIV, *Institutiones Ecclesiasticae*, 107, IX - in the case of Milan, in the year 1589, and in the case of Limoges, on June 18, 1622), and the Canonicus Poenitentiarius while hearing confessions (Council of Trent, Session 24, on Reform, Chapter 8), as well as the Canonicus Parochus of the Cathedral Church while actively performing his parochial duties (Council of Trent, Session 22, Chapter 3, on Reform, and Benedict XIV, *Institutiones Ecclesiasticae*, I, c., in the case of Milan, February 13, 1639). Furthermore, it is derived from certain jurisprudence that the benefit to the Church is a legal reason when this benefit is resolved into the benefit of the Chapter, or when it pertains to its persons, or its goods, and to its rights. Hence, distributions are made to the absent Canonicus for the business of the Chapter (Benedict XIV, *Institutiones Ecclesiasticae*, I, c., in the case of Palermo, in the year 1588, and in the case of Segovia, in the year 1589). - Conversely, it is clear that the benefit to the Church, in which the Benefice resides, is not a legal reason when such benefit tends to favor the Bishop, the Diocese, the worship, and the souls, without any relation to the prebend or the chapter mass, to the community of Canons, and to the business of the Chapter. Hence, distributions cannot be made to Canons assisting the Bishop in celebrating a private

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or non-pontifical Mass, or in performing other non-pontifical functions, or accompanying him in Visi-

[*Latin ed. p. 94*]

94. From the deliberations of the Holy General Council (Benedict XIV, *Institutiones Eccl.*, I, c. in causa Colonien, anno 1587; in causa Sor., April 22, 1679; and in causa Sulmonen., December 5, 1626), as well as from the Vicars General of the Bishop (ibid., § X, in causa Bitleti, December 17, 1627; and in causa Catan, May 9, 1671), and also from the Canon Regulars who serve as synodal examiners, and from Canon Regulars who voluntarily celebrate Mass or hear confessions while reciting the canonical hours, as can be seen from the cases mentioned therein. Much less is the juridical advantage to be considered, which is alleged in the case, namely, the advantage derived from the preaching of the Word of God in the episcopal church or in the cathedral. This advantage is real and evident, but the Canon Regulars are in no way obliged to strive for it, nor can they, for this reason, lawfully absent themselves from the choir when the Bishop is present, to whom this duty is imposed by divine and human law. Furthermore, let this be noted: The Sacred Congregation responded that a theologian reading [sacred texts] can, by grace, accrue the daily distribution [of alms] for the entire day in which he reads – in Hispalen, July 15, 1645, *lib.* 17, *Decretorum*, p. 496; but not on the preceding day in Avignon, October 1686, in *XV Dub.*, *lib.* 4, *Decr.*, p. 187; nor in Anagnina, December 16, 1645, *lib.* 17, *Decret.*, p. 533. Nor is a Canon Regular theologian considered present for the purpose of accruing the daily morning distribution, which is recited in the evening of the preceding day according to the custom of the Church; in *Dubium* ad Cap. 1, Sess. 5, *De ref.*, Posit. 89. The true question is: Whether a theologian who is present on the days in which he reads, should also be considered present at the morning prayers, which, according to the ancient custom of the Church, are recited in the evening of the preceding day for the following day: The Sacred Congregation responded: "No," in Hispaniarum, December 1587, *lib.* 5, *Decret.*, p. 71. He truly rejoices in the distributions that are given for anniversaries if they occur on the days in which he reads, in Avignon, October 1586, in *XVII Dub.*, *lib.* 4, *Decretorum*, p. 188. And Piggnatelli, *Tom.* 3, *Cons.*, 62, n. 38, reports that, if a theologian reads in the morning, he is considered...

[*Latin ed. p. 95*]

VALLISOLETANA, 95, concerning the right to participate in the choir with regard to the office said before morning prayer, if it is in the evening for the vesper office; but in other cases, or at most, for the entire day that he reads from the office, as also for the entire day that he has the common office by obligation – in Perugia – Theologalis, July 30, 1859, § contra -. An edict was issued that if several Readers are chosen by the Bishop, only one

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can enjoy such a privilege, in Sedunensis. Regarding Praebendae, Theologalis, January 24, 1801. Indeed, the Bishop of Sedunensis established a chair of Sacred Theology and the lack of Theologians among the Canons was sufficiently compensated by three other Canons with a small salary. Regarding this matter, the Bishop requested that at least one of the Canon Readers be granted the privilege of being present in the choir, according to the Bishop's discretion, which is otherwise due to a Canon Theologian when he teaches; or rather, according to the opinion of the Chapter – that to each of the three Readers or Professors of Sacred Theology, the privilege of being present in the choir for at least one month in the year be granted, due to their reading. However, regarding the doubtful question 1: "Whether and how a Reader or Readers of Theology should be granted the privilege of being absent from the choir and receiving the benefits of the Praebenda in this case." The Sacred Congregation responded: "To the first, affirmatively, for one Reader, chosen by the Bishop, who is excused from the choir on the days he reads, and who also receives the daily distributions; – in Sedunensis. Regarding Praebendae, Theologalis, January 24, 1801. This is reported by Pallottini, V. Canon Theologus, Vol. 4, n. 445 seq. Finally, the Sacred Congregation, with a recent negative response, dismissed on December 21, 1862, a question entirely similar to ours, in which it was requested to declare such a custom of being absent from the choir for the sake of preaching to be legitimate; otherwise, an indulgence for absence was requested. For in this case, the Canons reported that, according to ancient custom, those absent from the choir for the sake of preaching received distributions, and to the extent that such a custom...

[*Latin ed. p. 96*]

96. The decrees of the Sacred Council condemn those who sought that at least the Canons, who exercised the ministry of preaching within the boundaries of a parish, might be able to receive distributions. The Archbishop, however, having removed this limitation, sought that the Canons, preaching in any church within a diocese, might be able to receive distributions, and among other things, under the proposition of doubt number VI – "Whether and how Canon Regulars absent from the choir, dedicated to the ministry of preaching, would receive distributions" – the response was "No, in all cases." The Archbishop of Emus fully approves of such a custom; he declares that it does not matter when it began, but calls it an ancient custom, and asserts – to the great scandal of the people who, from their childhood, have seen and heard such a practice in this Church – that it should be maintained. Nevertheless, this custom does not seem to be so firmly established and commonly approved, since it has aroused scruples and anxieties in the Canons. With these things in mind, the following questions were proposed: I. Whether the custom by which a Canon Regular and other Canons, as well as beneficed clergy, are present in the choir for the

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purpose of receiving daily distributions throughout the week, except for one hour on the day of the sermon, should be approved. And, secondly: II. Whether it is expedient to grant an indulgence of absence according to the request of the Ordinary in this case.

RESOLUTION. The Sacred Council, after discussing the matter on April 29, 1899, decided to respond as follows: To I. No. To II. Yes, for two days, for a period of five years.

[*Latin ed. p. 97*]

97. REGULARITY OF AUGUSTA. June 17, 1899. Through summary petitions. SUMMARY OF THE CASE. Mr. Hoefner, residing in the village of Lodi, aged 24 years, formerly of the diocese of Würzburg, and now admitted by the Bishop of Augusta to the diocese of Augusta, having completed his studies in the humanities and literature with distinction, and not yet having received the tonsure, desires to enter the sacred orders, from which he is reluctantly excluded due to a defect in his eyesight. Therefore, in order that he may at least obtain a dispensation for what is ordinarily forbidden to him, he humbly presented a petition to the Most Holy [Father], explaining the irregularity in question and requesting permission to be admitted to all the orders, and that, due to said defect, he may be allowed to celebrate Mass of the Blessed Virgin Mary or for the dead, and to recite the Office of the Blessed Virgin Mary in place of the entire Divine Office. The Bishop of Augusta, highly commending the petitions presented by him, has the following in favor of the petitioner: "The petitioner, having completed his studies in the humanities and literature with distinction, was suddenly afflicted with a severe illness of acute cerebral inflammation, which was followed by such a permanent weakening of the eyesight of both eyes, that the petitioner, due to his condition, was compelled to seek admission to the Pfaffenhusen Institute for the blind, in which he could, by agreement, reside and be supported for the rest of his life, until death. The Superior of the Congregation of St. Joseph in Ursberg and the Rector of the Pfaffenhusen Institute for the blind graciously received Mr. Hoefner into the house of said Institute, so that the Ursberg Congregation, through a certain sum paid from its assets by agreement, would undertake the obligation and burden of providing him with lodging and sustenance until death. At this time, the Superior of Ursberg has already enrolled the petitioner as a member of the student body of the clerical seminary of Dillingen for two years, and in all..."

[*Latin ed. p. 98*]

98. Having diligently cultivated philosophical and theological disciplines, and having been promoted to the priesthood as a catechist, he considered that it would be very beneficial to him in the care of souls to be a confessor, to preach, and to celebrate the Holy Sacrifice. "Although,

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due to the infirmity of his eyes, he cannot read what is printed or written in ordinary type, he nevertheless, partly through the internal attention of his mind, which has been cultivated in school, and partly with the merciful help of his companions who repeat to him what he hears, retains in his memory what he has heard in each lesson, and, endowed with a good disposition, makes great progress in studies and sciences. It may be added that he possesses the Holy Scriptures, several compendiums of sacred doctrine, namely dogmatic, ecclesiastical history, liturgical, and ascetic works, the book *De Imitatione Christi*, and also the Little Office of the Blessed Virgin Mary, and other necessary books, all of which have been printed in raised letters suitable for the condition of the blind, and from which he can draw a great deal of assistance in strengthening his knowledge. "Through the excellent conduct he exhibits, he is not only a joy to his superiors and teachers, but also provides an example to his classmates, and he gives clear signs of an undoubted vocation. "Although he suffers from 'atrophy of the optic nerve,' as attested by a doctor, he can nevertheless distinguish objects that are a distance of half a meter away, and he can easily read the *Missale ad usum sacerdotum caecutientium* [Missal for the use of blind priests], prepared and approved by the Congregation of Sacred Rites in Ratisbon, and published by the Pustet printer, not only during the day, but also at night with the lights burning. He has also been able to ascertain, through experiments with these instruments, that he can distinguish, from a distance of one-fifth of a meter, fragments of the host lying on the paten and corporal, and he can distinguish the particles of the unconsecrated host that are to be broken, and he can safely touch the mouth and tongue of those receiving the host – in the manner of Communion – and he can certainly place the host in the mouth and upon the tongue, and he can observe all the other ceremonies of the Holy Mass properly and without any difficulty, so that there is no danger of scandal or disgrace."

[*Latin ed. p. 99*]

Aosta, 99. Furthermore, the Superior of the aforementioned Ursberg Congregation, who has undertaken all manner of support for the aforementioned candidate, has always looked forward to, and affirms, and promises that another priest will assist the candidate in performing the sacred rites in case of necessity. "Therefore, since provision has been made for the candidate's support, and he enjoys good health of body beyond any defect, and can, in due time, catechize, preach, hear confessions, and perform all that is done in the celebration of the Mass, without danger, especially with the assistance of another priest, and since his knowledge, morals, and true vocation to the clerical state have been proven, and since the candidate, being endowed with knowledge and ardently desiring the grace of the priesthood, would be in a most grievous condition and

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most unhappy, and furthermore, the Superior of the Congregation of Saint Joseph, which serves as the director of the Institute for the Blind, considering the spiritual benefits to be gained for his Institute, earnestly and urgently requests that the alumnus Ludovicus Hoefner be admitted and advanced to all the sacred orders, up to and including the priesthood, having carefully considered all these circumstances, we do not hesitate, but humbly commend the prayers of the candidate, the alumnus, and the Superior to the benignity of Your Holiness, and earnestly request that Your Holiness deign to grant: 1. A dispensation regarding the irregularity arising from a bodily defect; 2. The faculty to say Mass daily, either in honor of the Blessed Virgin Mary or for the dead; 3. A license to recite the Little Office of the Blessed Virgin Mary in place of the entire Divine Office."

Synopsis of the Discussion: THE REQUEST SEEMS TO BE DENIED. In this case, it appears that there is no doubt regarding the irregularity, since the general canons declare that one who is unable to celebrate Mass securely due to a bodily weakness is irregular, and this must be maintained in this case, as admitted by this Holy Congregation in two previous instances.

[*Latin ed. p. 100*]

100. From the acts of the Holy General Council, specifically those pertaining to our case: in Naples, on September 17, 1814, as recorded in the "Treasury of Resolutions," and in Vercelli, on July 18, 1860, as mentioned in petitions submitted. In the first case, the acolyte Dominic De Paulis, recovering from a certain illness, began to suffer from such a weakness of the optic nerves that he could scarcely distinguish light from darkness. However, persevering in his studies, having made great progress in them and having become skilled in the sacred ceremonies, he petitioned the Holy See for a dispensation regarding his irregularity. Nevertheless, he received a decidedly unfavorable response from the Eminences, although the Ordinary highly praised his excellent clerical qualities and the merits of his family towards the Church. In another case, in Vercelli, the cleric Egidius Ferraris, afflicted by a simple weakness of vision, petitioned the Holy Congregation to grant him the initiation into the sacred orders, and to allow him to celebrate a votive Mass to the Blessed Virgin on feast days and on days of devotion, while on other days he might celebrate a Mass for the dead. But, despite the letters of recommendation from his own Bishop, the Holy Congregation responded "it is not advisable." This also occurred in a certain colony, on September 13, 1866, and in many other instances. GRACE SEEMS TO BE DENIED. However, in the aforementioned cases, as also in the present one, the matter concerned advancement, and the dispensation was denied. Nevertheless, in the cited cases, more serious impediments were present, since in Naples the acolyte De Paulis could scarcely distinguish light from darkness, and in Vercelli the cleric Ferraris

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was in no way able to read the Sacred texts in the missal. But in our case, Ludovicus Hoefner, although he sees things somewhat indistinctly and unclearly, as a healthy person sees them, requires glasses of a slightly larger and wider size, but he has a missal printed in larger letters, which he can use to celebrate Mass, and whose edition has been approved. Regarding this matter, the Bishop testified that the petitioner "can clearly distinguish objects that are a distance of half a meter from the eye"; indeed, the same Bishop continues: "through experiments conducted with him, it was possible to observe..."

[*Latin ed. p. 101*]

Aosta, 101, concerning the distance of one-fifth of a meter, states that even fragments of the Host should lie within the paten and corporal; therefore, it concludes, "Furthermore, other sacred rites of the Mass can be observed properly and without any difficulty, so that the danger of scandal or disgrace need not be feared." Moreover, there are further examples, of a more difficult nature, in which the Sacred Congregation considered it appropriate to grant a dispensation. Thus, in a certain case in Geneva, on March 20, 1880 (1), a dispensation was granted so that the deacon Francis Dufresne, who had almost lost the use of his eyes and had a general and blurred vision, could receive the sacred order of the priesthood; nevertheless, the Most Eminent Fathers replied, "Considering the particular circumstances, with the granting of the faculty for the priest to celebrate Mass of the Blessed Virgin, and with the obligation of the assistance of another priest or deacon, provided that the words are spoken with the Most Holy." Also, in a certain case in Faventina, on February 15, 1879 (2), a dispensation was granted to the cleric Farolfi, of the place of Brisighella, who was hindered by an irregularity due to the complete defect of sight in his right eye, and weakness in his left eye, so that even with the aid of optical instruments, he could only read at a very short distance (di un palmo). Recently, in Majorca, on May 30, 1891 (3), a dispensation was also granted to a cleric, at the discretion and with the favor of the Bishop, who was so blind from birth that he could only read with great difficulty, even with the aid of spectacles. Furthermore, the petitioner is aided by laudable testimonies of knowledge, of a virtuous life, and of the certain utility that will result from his promotion to the priesthood for the Church; since the petitioner has already entered the Institute of St. Joseph in Ursberg, which is dedicated to the blind, where he can remain and be supported for the rest of his life, until death. (1) Reported in Vol. XIII, 353. (2) This matter is found in Vol. XII, 613. (3) This is found in Vol. XXIX, 135.

[*Latin ed. p. 102*]

102 FROM THE HOLY GENERAL COUNCIL. Wherefore, the aforementioned Ursberg Congregation, as stated by the Bishop, hopes that he will

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be "greatly beneficial to it, as he is promoted to the priesthood, to serve as a catechist, preacher, confessor, and celebrant of the Holy Sacrifice, for the care of the souls of the blind." Moreover, if the situation worsens, no scandal or disgrace seems to be to be feared; for the Bishop testifies: "The Superior of the aforementioned Ursberg Congregation, who has undertaken every kind of support for the orator, has always looked forward to, and is capable of, and has promised, that another priest will assist the orator in performing the Sacred Office in case of necessity." With these things noted, the question was raised as to what should be answered in prayer. RESOLUTION. The Sacred Congregation, having considered the matter on June 17, 1899, decided to respond: for the granting of a dispensation from the defect of irregularity, provided that the orator celebrates with the assistance of a priest, having spoken the words with the Most Holy. CEPHALUDEN. DOUBTS REGARDING THE FACULTY OF GRANTING DISPENSATIONS FROM MATRIMONIAL IMPEDIMENTS. July 22, 1899. Session 24. Chapter V. Concerning marital impediments. SUMMARY OF THE FACTS. Pope Pius IX, among other salutary provisions of his governance, issued two Apostolic Letters to the Bishops of Sicily on February 5, 1864; the first, which begins with "Suprema," Apostolic, which they called the Sicilian Legation, the judge of the Monarchy, and its Tribunal, was abolished (1); the second, which begins with "Multis gravissimis," in order to address the needs and expenses of the faithful of Siculorum, granted certain faculties to the Sicilian prelates to relax marital impediments, so that these same faithful might more easily and conveniently approach them. (1) These were reported in Vol. III, pages 177 and 186.

[*Latin ed. p. 103*]

CEPHALUDEN. 105. This Sacred Congregation, on another occasion, or under the date of April 26, 1873 (1), examined and resolved concerning the aforementioned granted faculties, and raised another question regarding them. The Bishop of Cephaluden, with the following letter: "Our Most Holy Lord, Pope Pius IX, having suppressed the Legation of Sicily, or the Judge and Tribunal of its Monarchy, through Apostolic Letters issued on the fifth day before the Kalends of February, 1864, and published on October 10, 1867, also granted other Apostolic Letters to many, with which He wished to provide for the benefit and advantage of the people of Sicily; and for this reason, He granted certain faculties to the Bishops, among which is this one. "We grant a special faculty for granting matrimonial dispensations in the third and fourth degrees of consanguinity and affinity, whether simple or double, and also mixed, provided that the first degree is not reached. "However, the Reverend Fathers of the Universal Inquisition, in session IV, on July 2, 1884, declaring the formula by which the same faculty is granted to the Bishops of the Federated States of America, in certain degrees of consanguinity, decreed that the particle should be understood in a

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disjunctive, and not a connective sense, and that the words of the formula should be understood in such a way that the faculty granted is understood to be for dispensing both from the impediment of consanguinity and from the impediment of affinity separately, but not when both impediments concur in the same case: hence, a doubt has arisen as to whether this declaration is also valid for defining the faculties granted to the Bishops of Sicily in almost the same words. "1°. Therefore, the question is asked: Can the Bishops of Sicily dispense in the third and fourth degrees of consanguinity and affinity, namely, double and mixed, when both the impediment of consanguinity and the impediment of affinity concur in the same case? 2°. When the affinity or consanguinity, from which the mixture arises, reaches the second degree, for example, if the second degree of affinity occurs with the third degree of consanguinity. (1) These doubts are found in Volume VII, page 290.

[*Latin ed. p. 104*]

104 FROM THE HOLY GENERAL COUNCIL: "It is necessary to have a genuine solution, so that the conscience and validity of the Sacrament of marriage may be considered." Because it was seen that this practice had existed among the Bishops of Sicily, namely, to grant dispensations in the third and fourth degrees of consanguinity and affinity, even when both impediments are present jointly or cumulatively in the same case, therefore, information about such a practice was obtained from the Archbishop of Palermo; who reported that the same practice existed in all the Episcopal curias of Sicily; as he learned from the local Ordinaries, whom he had questioned about this matter. Synopsis of the Discussion: In examining this question, it is helpful, in the first place, to refer to what was discussed by the Most Eminent Fathers on April 26, 1873. Indeed, at that time, the following doubts of the Bishops of *Siculorum* regarding the power to grant dispensations from matrimonial impediments were presented to the Holy Congregation of the Council: In the Constitution *Multis gravissimis*, January 28, 1864, the Ordinaries of Sicily are granted the power to dispense "in favor of those who are truly poor in the third and fourth degrees of consanguinity and affinity, whether simple, or double, and even mixed, provided that the first degree is not reached." Given this, the following questions are asked: I. Whether the Bishops of Sicily can dispense in the third or fourth degree of consanguinity or affinity, which is triple, that is, descending from a triple root. II. Whether the same Ordinaries can dispense when consanguinity or affinity is found in the third or fourth degree, which is double, that is, descending from a double root, and at the same time another mixed degree is present, such as from the third and fourth, descending from a third root. III. Whether they can validly dispense for those who are not poor. IV. Whether the dispensations granted to those

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who falsely alleged poverty are valid.

[*Latin ed. p. 105*]

CEPHALUDEN. 105 And the Sacred Congregation of the Council, on April 26, 1873, responded: To questions I, II, and III, "No." It is advisable to refer to the text of the Constitution *Multis gravissimis* in the part pertaining to the matter. "Desiring greatly to promote the benefit and advantage of the people of Siculorum, We grant a special faculty to all and each Archbishops, Bishops, and other local Ordinaries, and also to canonically elected Capitular Vicars, of no diocese in Sicily, to grant matrimonial dispensations in the third and fourth degrees of consanguinity and affinity, whether simple or collateral, and also mixed, provided that it does not involve the first degree, and provided that there is a canonical reason for granting the dispensation freely, without receiving any payment whatsoever, and only for the benefit of those who are truly poor. We wish and command that in granting each dispensation, mention be made of this special Apostolic faculty. And We also wish that this faculty, granted by Us concerning the aforementioned matrimonial dispensations, be understood by all in such a way that no one may ever interpret it as an impediment to the faithful of Siculorum, if they so desire, from directly approaching this Apostolic See to obtain the same dispensations." The Holy Father granted these faculties for a period of ten years; therefore, when the time has passed, the extension of the faculties must be requested. To guide the inquiry in these matters, it is helpful to establish these principles. — According to the common doctrine, the effect and validity of a dispensation have a strict interpretation with respect to a specific person; a general faculty to grant dispensations, or one granted to dispense not with respect to a specific person, has a broader interpretation. *Riganti in reg. 14 Cancell. n. 69 seq.* Hence, various questions are resolved differently, depending on whether they refer to the former or the latter case. Nevertheless, according to the practice of the Apostolic See, commonly recognized by the Doctors, the fourth...

[*Latin ed. p. 106*]

106. Furthermore, the general faculty of dispensing cannot extend from one impediment to another, even if less grave, unless the latter is contained within the former; nor from one species of impediment to another; nor from one line [of consanguinity] to another; nor from a marriage contracted to one contracted; nor from one being about to contract marriage to one already contracted, and so forth. (Santi, Appendices) to book 4, Decretals, page 208. For this reason, in response to the doubts presented, as mentioned above, the Sacred Congregation responded on April 26, 1873: "No, because the dispensation faculty for multiple impediments sets explicit limits regarding the degrees, beyond which the faculty of dispensing does not

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extend." Furthermore, in this case, there is a general doctrine, beyond all doubt, which denies the possibility of dispensing in different impediments, when in the same case there is a mixture or concurrence of different impediments, such as consanguinity and affinity. Indeed, the Congregation for the Propagation of the Faith, in response to this doubt: "Whether, by virtue of the faculties that the Holy See, through the Sacred Congregation for the Propagation of the Faith, usually grants to the Bishops of Germany for a period of five years, it is also possible to dispense in cases where two or more canonical impediments concur simultaneously, if the faculty of dispensing is explicitly granted separately for each of these impediments?" responded on June 16, 1868: "First of all, having considered the declarations of the Sacred Tribunal, it has been observed that the faculties granted for dispensing regarding individual impediments cannot extend to the case in which these same impediments concur and accumulate together." Regarding this matter, the Sacred Congregation of the Holy Office taught on May 18, 1869: "It is a most certain and incontestable principle that the use of multiple faculties cannot be combined in the same case, because of the rule that prohibits the accumulation of dispensations. Therefore, these faculties are of strict right, just like the dispensations themselves, and must therefore be strictly interpreted, and not extended beyond what is stated, that is, beyond the express will of the grantor. Therefore, since there is no mention of accumulation in the various faculties of dispensing for various degrees, it follows that those who are endowed with these faculties cannot make use of them simultaneously in the same case."

[*Latin ed. p. 107*]

CEPHALUDEN. 107 cases. And the rescript addressed to the Bishops of the Federated States of America, dated, which is recalled by the Bishop of Cephaluden, is as follows: "Regarding question 1: - In form I of the Sacred Congregation for the Propagation of the Faith, number 6, the power to grant dispensations in certain degrees of consanguinity and affinity is granted. It is questioned whether the word 'and' should be understood as disjunctive or conjunctive?" The Sacred Office, on July 2, 1884, responded: "Regarding the second point, the words of the formula should be understood as granting the power to dispense both from the impediment of consanguinity and from the impediment of affinity, separately; but not when both impediments concur in the same case." However, considering the intention of the Bishops of Sicily, it can be noted that they favor a custom that is more than thirty years old; and it is clear to no one that custom is the best interpreter of the law, so that it is understood by all that a thirty-year custom has the power to abrogate or correct a law that is contrary to it. Furthermore, it is not improbable that a custom, even one of ten years, can be given force against the law, as demonstrated by St. Santi, book 1, Decretals, title De consuet. Moreover, the very power to grant dispensations,

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as we have said and as Sánchez widely demonstrates, De mat. VIII. Disp. II. 5, is certainly favorable and of broad interpretation, and in this case, it should be given a more favorable and broader interpretation, because the Pope wished to consider the benefit and utility of the faithful of Sicily. On the other hand, several things appear to be of great weight and to oppose the intention of the Orators. - Firstly, these powers are granted in such a way that they must be renewed or granted again by the Holy See every ten years. Therefore, in a new grant, the power to grant dispensations is granted anew, and in the same terms and under the same conditions, with which the Holy See intends to limit its grant. - Furthermore, the will of the grantor, when requesting the extension of the indulgence for a certain time, is to more firmly recognize the power of the grantor, and to prevent access to prescription against that same power. For the same purpose, it is stated in the grant: "Vo-

[*Latin ed. p. 108*]

"Moreover, We decree and command that in each dispensation granted, mention be always expressly made of this special Apostolic faculty." This clause is thus explained by Feje, *De imped. et dispensationibus matrimonialibus*, 4th edition, no. 633: "The Bishop must express that he is acting by Apostolic delegation, and this pertains to the validity of the dispensation, when he explicitly states it, as is often done in this matter, either by the ablative absolute or in another way, provided that condition is established." In this sense, the Sicilian indult is expressly interpreted by Oaillaud, *Manuel*, 4th edition, no. 326.

Perhaps a more serious difficulty arises when the time necessary for establishing such a prescription is considered. For the matter is not about prescribing any law of common law, but about the very law or privilege of the Roman Church, which laws either cannot be prescribed at all, or are not prescribed unless for at least one hundred years, as the most learned jurists hold. Indeed, Benedict XIV teaches this in *De Syn. dioeces.* IX, II, 6: "But even if it is given that a custom has arisen in a certain diocese concerning which there is a dispute, so that by it we say that the Bishop has acquired a legitimate right to remove impediments introduced by the Ecumenical Councils and by the Supreme Pontiffs, it must first be carefully examined whether that custom has had all the necessary conditions to prevail over the law forbidding the Bishop from presuming to infringe or in any way relax the established rule. Indeed, since such a custom not only tends to abolish the law, but also to take away and diminish the rights belonging to the competence of the Roman Pontiff, besides the other conditions, it is necessary that it has persisted for at least one hundred years without any interruption." Therefore, the aforementioned Van-Espen, *I. E. U.*, P. II, title 14, chapter 1, no. 11, in order to support the authority of the Bishop of Cento to grant dispensations in the third and fourth degrees of consan-

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guinity or affinity, and to demonstrate that he has acquired this authority through legitimate custom, argues that such a custom must be considered *immemorabile* (unforgettable). Also, recourse is had to custom, of whose origin there is no memory.

[*Latin ed. p. 109*]

CEPHALUDEN. 109. The cited Author in the *Collationes Parisiensem*, volume 3, page 2, section 2. However, ultimately and above all, it must be considered whether, through such a custom, if any exists, the nerve of ecclesiastical discipline is broken: in which case, Innocent III never declared, in chapter *Cum inter*, that through it anything contrary to the law was permitted. These principles seem to have been applied by the Holy Congregation of the Propagation of the Faith, which condemned a custom or practice that had been reported to exist among the Apostolic Vicars in India; indeed, it stated that such a practice had not been approved by the Apostolic Vicars, so that they could legitimately exercise the asserted faculty. The instruction issued on September 8, 1869, reported in the *Collectanea* of the Holy Congregation of the Propagation of the Faith (Rome, 1893), states the following under number 1469: "Because it has been reported to the Holy See that several of the Eastern Indian prelates have, up to now, used faculties concerning dispensations in impediments that prevent marriage, even when two different impediments are present in the same person, believing that this pertains to the faculties granted to them; which, however, cannot be admitted; it is decreed that, with regard to past marriages in which, with the concurrence of several impediments, a dispensation has been granted in this manner, the Apostolic Vicars should remain silent and leave the spouses in good faith; and with regard to the future, they should refer each case individually, and, if they foresee that sufficient time will not be available to refer to the Holy See, they should request a faculty for a number of cases which will be granted to them by the Supreme Pontiff, if it seems opportune." These words do not mean: "The Apostolic Vicars should remain silent and leave the spouses in good faith," because it is not from this that it is deduced that they validly dispensed; rather, the will of the Holy See to heal marriages at their root is expressed. Not once has this permission to heal been explicitly indicated, as, for example, by the Holy Penitentiary on July 14, 1881, as cited by Feje, I, page 595. Therefore, if the Most Eminent and Reverend Fathers are pleased to answer "No" to the proposed question, provision has already been made for another question, in which a specific case of accumulation is presented. But in every case, it will be useful to say something.

[*Latin ed. p. 110*]

110 FROM THE MOST HOLY COUNCIL, the question of another doubtful matter is also raised. — Indeed, in the formula of dispensation granted

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by letters, in *Multis gravissimis*, caution is also taken regarding the degree of consanguinity or affinity, whether simple or twofold, and even mixed, provided that the first degree is not reached. — Furthermore, in different meanings among the Authors, the terms "simple" and "mixed" degrees are found, and in the very Apostolic Indulgences, these terms are not always used with the same meaning. Zitelli, *De dispens*, ed. 1887, p. 182. — Their proper and most common meaning is to indicate the equality or inequality of degrees. The terms "and twofold" and "and mixed" sometimes signify the multiplicity of the same impediment; and sometimes they signify the concurrence of different impediments, but in this sense, the expression "and mixed degrees" is not understood unless it is expressly stated in the Indult. Gasparri, *De matr.*, n. 672. Therefore, the question is raised whether the expression "mixed degrees" refers to the multiplicity of degrees of the same impediment, or to the multiplicity of different impediments. Because, from the statements presented, it is clearly evident that the faculty of dispensing is not granted in cases in which different impediments accumulate and concur, unless it is expressly stated, it follows that in the case of a mixture, the concurrence is understood to be of various degrees of the same impediment. However, in the case where it would be pleasing to the Most Eminent Prelates to admit and approve the customary right, the question must also be investigated whether it would be permissible for Bishops to dispense when the affinity and consanguinity from which the mixture arises, according to the degree, reach the first degree. — However, in the Constitution *Multis gravissimis*, the faculty is granted for the mixed degree as well, provided that the first degree is not reached. — This reservation of the first degree refers to the practice introduced in the Curia after the Constitution *Sanctissimus* of Pope Pius V, of August 26, 1566. Thus, if the parties proceed from the same stock, but are not of equal degree, this circumstance must be expressed when one of the contracting parties is joined to the stock in the first degree. Hence, if two parties are in the first and second, or in the first and third degrees,

[*Latin ed. p. 111*]

CEPHALUDEN. In the third degree, or in the first and fourth degrees, both degrees must be specified, under penalty of nullity, as stated in the cited Papal Constitution. Indeed, in practice, it has been introduced that, in general, whenever orators are joined in unequal degrees, not only the more distant, but also the closer degree must be indicated. Although the dispensation always falls directly upon the more distant degree, because, according to the canonical rule of the Western Church, the more distant degree of kinship is considered, namely, that the more distant degree draws the closer degree to itself, nevertheless, in order that both consanguinity and affinity may be fully determined, not only the more distant, but also the closer degree must be indicated. It is helpful to recall what Gasparri states

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in *De Matrimonio*, n. 320: "If the orators are joined in an unequal degree of consanguinity and affinity, beyond the first, e.g., in the second and third, or in the third and fourth, the Sacred Congregation grants the dispensation in the more distant degree, which draws the closer degree to itself, and at the same time declares, or, as it is said, issues declaratory letters, that the distance of the closer degree does not impede [the marriage], using these words in the rescript: 'We declare that the distance of the second degree of consanguinity does not impede them.'" Thus, St. Pius V in the Constitution *Sanctissimus*, August 26, 1566. – De Iustis II, III, n. 39 adds: "These declaratory letters are issued not because the closer degree impedes the marriage, but to remove scandals from the people who are ignorant of the law, who believe that a dispensation has not been validly granted solely on the basis of the more distant degree, but rather that it is more necessary to grant it on the basis of the closer degree, since, according to their belief, it seems to involve a greater degree of kinship." To issue these declaratory letters for the closer degree, just as to grant dispensations for the more distant degree, belongs to the Apostolic See. We conclude that, beyond the first degree, because if the closer degree is the first, the practice of the Sacred Congregation is to grant the dispensation in both. Therefore, since in the letters of indulgence of Sicily mention is made only of the unequal degree reaching the first, it follows that, in degrees beyond the first, a free faculty to grant dispensations has been conceded. Finally, it will not be superfluous to note, Emum Ar-

[*Latin ed. p. 112*]

112 From the Council of Panormitan bishops, it was reported that a Constitution entitled "Multis gravissimis" had been published. However, since Sicily has enjoyed numerous privileges from the most remote times, it seems necessary to inquire whether such powers of dispensation, as they are according to received customs, existed before the Constitution "Multis gravissimis," which seemed to confirm and ratify the old law rather than grant new powers. With these considerations in mind, the following questions were proposed: I. Whether the bishops of Sicily are able to dispense in the third and fourth degrees of consanguinity and affinity, that is, in the double and mixed cases, when both the impediment of consanguinity and affinity concur in the same case. II. Whether they are also able to dispense when the affinity, or consanguinity, from which the mixture arises, reaches the second degree in the case. RESOLUTION: The Sacred Congregation, after deliberation on July 22, 1899, decided to respond: To I and II, negatively; and to petition the Most Holy [Father] for a remedy regarding the past. FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS – concerning ROMAN residence. On March 10, 1899. The pious Priest Anthony Piatti, formerly a canon of the Lateran Palace and later also Vicegerent of the City, instituted a pious

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work of spiritual exercises, named the Devotion of the Blessed Virgin Mary. This work was granted a building by the Most Reverend Cardinal Cristaldi, at the foot of the Janiculum mountain in Quarten.

[*Latin ed. p. 113*]

In ROMA, the street named after St. Francis de Sales was granted, with the burden of an annual tax of 42 scudi, which already weighed upon the building. The founder, Piatti, until his death, personally managed the Pii Operis, to which he had already donated the property that constituted the building, as well as a vineyard outside the Lateran Palace. Upon his death in the year 1841, an administration, designated by him in his will of December 15, 1840, succeeded him. In the year 1841, in the month of December, the aforementioned Institute had already been commended and endowed by the Popes Pius VII, Leo XII, and Gregory XVI, and was canonically approved by the Vicegerent of the City, Vespignani. In the year 1851, the nuns of the Divine Love, following the rule of St. Augustine and dedicated to the education of girls, lacking suitable dwellings, obtained, through the blessed memory of Pius IX, a place among the pious institutions on the Janiculum Hill. However, after the year 1870, when they were expelled from that building by the Italian usurpers, they were, as decreed by the same Supreme Pontiff Pius IX, received into the building of the Pii Operis of Piatti, until suitable dwellings could be provided for them. In the meantime, the nuns undertook the obligation of paying to the Institute of Piatti an annual sum of 1000 scudi, which was to be used for the spiritual exercises undertaken by poor children in other pious houses. Meanwhile, a pious woman, Princess Odescalchi, offered her assistance and ordered the construction of a building for the nuns outside the Salarian Gate, also donating, verbally, a generous extension of land adjacent to it. However, she unexpectedly died while the building was still under construction, and although there was no written document, only a verbal donation, a necessary settlement took place between the nuns and the heirs of Odescalchi, who paid the nuns 55,000 scudi, which were subsequently deposited with the Vatican offices for annual interest. Informed of this, the administrators of the Pii Operis of Piatti insisted that the nuns...

[*Latin ed. p. 114*]

114 FROM THE DECREES OF THE HOLY FATHERS AND CANONS: they would abandon their dwellings and establish themselves elsewhere. But this is not the case. Since the Nuns appealed to the Supreme Pontiff, stating that they were unable to build or acquire, or rent, a dwelling suitable for their needs, namely one that could accommodate 22 religious sisters and 40 students, and on the contrary, the building of the Pious Work of Piatti, as they themselves claimed, had been established for the purpose of spiritual exercises to be carried out there by those engaged in military

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service or civil duties: indeed, according to the decrees of Pope Pius VII of February 25, 1820, and October 15, 1822, a certain sum was to be paid annually by the Pontifical and Military Treasury to this Pious Work. Therefore, the Nuns concluded that they would abandon the building when the Pontifical Government was restored, which was their desire. After the prayers of the Nuns were presented to the Most Blessed Father, may He be long preserved, a favorable decree was issued to the Nuns on January 30, 1894, and communicated to the Reverend Vicar of the City, the substance of which was that the Nuns should no longer be troubled by the Administrators of the Pious Work. Those who were informed of this Pontifical concession, insisted upon it with a special petition to the same Most Blessed Father, claiming that the Nuns were being subjected to falsehoods, and that the apostolic decree had no weight. This matter, however, for resolution, was referred to the Holy Congregation of Bishops and Regular Canons, to be discussed after the completion of the prescribed ceremonies, under the following question. Synopsis of the Discussion: He who deals with these matters recalls from the Council of Trent, Session 22, Chapter 11, on Reform, that the administrators of pious works are not only bound to preserve the endowment, but also to expend the fruits according to the laws of the foundation. Therefore, the administration of the Pious Work of Piatti, from the very beginning, opposed the reception of the Nuns of the Divine Love into the building, and only yielded when it became clear that the desired dwelling was precarious: indeed, it was suitable FOR THE PIOUS WORK OF PIATTI.

[*Latin ed. p. 115*]

Rome 115 was a pious woman, Princess Odescalchi, who had promised to complete a building outside the Salarian Gate for Nuns in the near future. It is stated that this is confirmed by several documents, such as a letter from the Vice-Prefect Lenti dated June 25, 1894, from the records of the administration of the Pious Work of Piatti for the year 1879, in which the Nuns are said to be received in the building on a precarious basis, from the declarations of the priest Polverosi, then appointed for spiritual exercises, and finally from the confession of the Nuns themselves, who do not deny that the house belongs to the Pious Work of Piatti, but only assert that the purpose of the Institute can no longer be achieved, since the exercises for the Pontifical soldiers or those devoted to the service of the Pontifical State are no longer carried out. Therefore, the nature of the precarious concession is not open to doubt. Indeed, a precarious concession lasts only as long as the grantor allows it, and this is true even if it has been granted for a certain time, such as, for example, until the Kalends of July, in which case the grantor can revoke it even before the specified time, according to law 12 ff. on precarious concessions, Ferr. Bibl. can. verh. precarium. Therefore, the Administration of the Pious Work of Piatti had the power

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to reclaim the building from the Nuns whenever it pleased. Now, the Advocate continues, it must be determined whether this condition has been changed by the Pontifical Rescript of 1894. The Advocate denies this, stating that it is tainted by deception and fraud. Indeed, the Nuns, in a petition addressed to the Supreme Pontiff, stated that their residence in the building of the Institute was precarious, or that they had not yet found another home. Furthermore, they claimed that the Pious Work of Piatti Institute was only intended for exercises carried out by Pontifical soldiers and those devoted to the service of the Pontifical State, which was false; indeed, as is confirmed by the records of the foundation of the Institute, recognized by the ecclesiastical authority itself, the Pious Work of Piatti was founded as a house of exercises for men of honorable condition in society. The Reverend Vice-Prefect of the City, Julius Lenti, in his explanatory letter dated June 25, 1894, states that in the year 1877, in this pious house, after the year 1870, it was used as a station.

[*Latin ed. p. 116*]

116. The Most Reverend Bishop and the Religious [orders], for the benefit of soldiers, and then, after being evacuated, were used as spiritual retreats for men of civil condition, and once even for the clergy; and it grieved [him] to learn that the building, restored to its founder's purpose, was subsequently granted for habitation, provisionally, to the Nuns of the Divine Love. Therefore, the Advocate concludes, the obtained rescript, being obtained by deceit and fraud, is in no way valid for the Nuns, as the Rota teaches before Pansirolo, *Recent*, p. 6, decision 295, *Coment.* Furthermore, it is of no consequence that the Nuns may have presented a false account, or omitted the truth, without deceit and malice, provided that the deceit and fraud pertain to the substance of the matter, since the matter in question is a concession granted in a third-party prejudicial manner; indeed, a false narrative, even if made unknowingly, vitiates the rescript whenever it is prejudicial to another, unless such prejudice would be upheld by the ignorance and good faith of the petitioner (cf. Rota, before Crescentio, decision 10, n. 2). Moreover, the advocate noted that the aforementioned building was granted to the Pio Opera Piatti, as is evident from the instrument of donation, by Cardinal Cristaldi, under the condition of reversibility to the heirs, in the event that it were no longer used for spiritual exercises for men of honorable standing in society. It is true that, according to the law of Italica of July 17, 1890, concerning pious works, in article 103, these conditions were completely abolished; but the aforementioned law applies to works of public beneficence and worship, as such, which are recognized by the government; but the Pio Opera Piatti was declared to be a private work for moral instruction, and is not subject to that law. Hence, in recent years, the heirs of Cristaldi have repeatedly insisted with the President of the Pio Opera, as he himself is ready to testify under oath,

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for the recovery of the bequeathed building; so far, they have not proceeded judicially, but if the Nuns continue to persist in their possession of the house, contrary to the intention of the pious donor, it is to be held certain, the advocate contends, that the aforementioned house will soon be lost to the institute of Piatti. Finally, the Defender recalls the enormous damage that...

[*Latin ed. p. 117*]

ROMANA 117. The administration of the Pii Institute presented a report concerning the permanence of the nuns in the building. The expenses incurred in the last decade for the maintenance of this building by the Administration amounted to 9589.32 livres, not including the taxes paid on the presumed annual income of 4000 livres from the rental of the house alone, while the garden is exempt from taxes. The nuns, in fact, pay 1050 livres annually for the rental of the house, and 320 livres annually for the use of the garden, whereas before the year 1870, it was rented for 500 livres annually with the right of access during spiritual exercises. Thus, the pension paid by the nuns scarcely reaches two-thirds of the total amount that the Administration of the Pii Work is obliged to pay for the maintenance of the building and taxes: and thus, the moral owner or the Pii Institute is in a worse condition than the nuns, who are tenants, and who, meanwhile, receive interest on a sum of 55000 livres deposited at the Vatican. From this enormous loss, it follows that the Administration is constrained either to relinquish the building to the treasury by not paying the taxes, or to come to an agreement with the heirs of Cristaldi. But since this would entail the ruin of the Institute, it is rather requested either that the annual pension be increased to at least 3600 livres, which is the minimum pension required from the 58 rooms of the building, with two gardens, or, if that is not possible, that a part of the building be returned to the Administration. IN FAVOR OF THE NUNS OF THE DIVINE LOVE. ON THE OTHER HAND, it was noted from the report (since the nuns had not appointed a representative) that their petition could not be considered as deceitful or fraudulent with regard to the substance. The reasons presented by the nuns in the petition submitted to the Supreme Pontiff were two. 1. Because they lacked the means to acquire a suitable house, or to rent another. 2. Because the purpose for which the Pii Work of Piatti was established, namely, exercises for pontifical soldiers and those bound to the service of the pontifical state, could not be achieved under the present circumstances. Indeed, the first reason is the same one that was presented when the nuns were first received into the building of the Pii Institute of Piatti, namely, the lack of another suitable dwelling.

[*Latin ed. p. 118*]

118 The Most Holy Congregation of Bishops and Regulars, concerning

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the matter of the house. A second reason for the cessation of the Pii Operis Piatti Institute can be considered secondary and impulsive. Therefore, if the first cause, which can be stated in this case, is true, the rescript remains valid, since this was what determined the Prince to grant the concession. However, the secondary or impulsive cause would invalidate the rescript if it were shown that the nuns had introduced it, not out of simplicity and ignorance, but out of malice and deceit, according to the well-known theory in chapter 20 concerning rescripts. But this is not proven, and nothing is presumed to be greater unless it is proven. With both of these points discussed, the following doubt was presented for consideration. Does the Pium Opus Piatti have the right to order the Sisters of the Divine Love to relinquish the building on the small mountain inhabited by them, or, if not, can it compel them to increase the annual sum to be paid for the lease in that case?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after mature deliberation, responded on March 10, 1899: Affirmative to the first part; concerning the second, it is the opinion that the Sisters of the Divine Love should, as soon as possible, and no later than three years, return the sacred building with its gardens to the administrators of the Pium Operis Piatti; in the meantime, however, while they remain there, they should yield to said administrators the fruits of the sum derived from the Odescalchi transaction, deposited in the buildings at the Vatican.

TROIANA PENSION. On March 24, 1899. In response to the prayers of both Kings of Sicily and the Bishop of Troia, Pope Pius IX, of blessed memory, by a Bull, issued under the date of June 25, 1855, established a new diocese.

COMPENDIUM OF FACTS.

[*Latin ed. p. 119*]

FODIANA, OR TROIA 119: The territory of Fodiana was divided, separating the town of Fodia from the diocese of Troia, and the town of San Marco in Lamis from the diocese of Sypontina. Regarding the endowment of the new See, precautions were taken to ensure that, according to the agreement made by the Municipality of Fodiana, a palace or building suitable for the residence of the Bishop and for the Chancery would be acquired; and until this was accomplished, the Episcopal table would receive two hundred ducats annually from the same Municipality for the upkeep of a suitable house. Furthermore, according to another solemn agreement, the Municipality was obligated to pay one thousand ducats annually to the same table, without any reduction. And since these revenues were not sufficient, the aforementioned Pontiff decreed that, in addition to the revenues of the table of Troia, a pension of two thousand four hundred ducats

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should be reserved annually, to be paid entirely in favor of the Prelate for the newly established See of Fodiana. Finally, in the same Bull, it was stipulated that the Municipality of Fodiana could redeem itself from the obligation of paying one thousand ducats by substituting fixed assets that would yield the same annual income, exempt from any burden; and also that the pension burdening the table of Troia would be reduced by one thousand ducats, when the solemn agreement of both Kings of Sicily had been carried out, assigning to the table of Fodiana all fixed assets that would provide a substantial equivalent annual income. No such substitution of assets was made, and therefore the Episcopal table of Troia was unable to experience any reduction in the pension. In the meantime, in the year 1867, a law was enacted by the Piedmontese government that abolished ecclesiastical property, which imposed an extraordinary tax of thirty for every hundred on the conversion of fixed assets; this tax was retained in the payment of the pension of the table of Fodiana. Regarding another tax, commonly called the "tax on movable wealth," the retention began in the year 1886 by the Prelate of Troia, Passero, who, under this title, began to retain three hundred ducats from the pension payment; Prelate Passero died on September 8, 1890, and then both the Royal Economate and his successor, Bishop Tempesta, continued to receive the pension without such a deduction.

[*Latin ed. p. 120*]

120 From the funds of the Bishop and Regular Canonries, the debt was paid in full up to the end of the first half of the year 1891. However, from that time onward, Bishop Tempesta, following the example of his predecessor, subjected this pension to the same reduction. Against this withholding of funds, the Apostolic Administrator of Foggia first appealed to the Sacred Congregation, and then the new, present Bishop, who further extended the dispute, arguing that neither tax, commonly called "di ricchezza mobile" nor the tax of thirty percent, should be applied to the pension, but that the full amount should be paid to him, according to the terms of the Bull of Pius VI.

This question was presented to the plenary Congregation of the Most Eminent Fathers on April 5, 1895, and the following formula was put to a vote: "Whether and how the decree *Cum Nuperrimis* should be applied in this case?" The response, after due consideration, was as follows: "With regard to the tax imposed by the Government, commonly called '30 per 100,' it should be borne by both the Episcopal Sees of Troia and Foggia in proportion. However, with regard to the other tax, commonly called 'di ricchezza mobile,' the Bishop of Troia should bear it, saving the right of the same Bishop to exempt himself from it by transferring the principal sum to the Foggia See, which corresponds to the income subject to this tax."

The Bishop of Troia then appealed against this decision, citing the bur-

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den of the tax commonly called "di ricchezza mobile," and the Bishop of Foggia appealed against the requirement that his See should bear the tax commonly called "30 per 100" in proportion. A new hearing was granted; however, the Bishop of Foggia subsequently withdrew his appeal, recognizing the justness of the decision of the Sacred Congregation.

Meanwhile, another question arose: The Bishop of Troia, wishing to proceed with the resolution of the principal sum in order to exempt himself from the burden of the pension, claimed that the sum to be transferred should yield an income of 7140 lire. In contrast, the Primate of Foggia held a different opinion, and...

[*Latin ed. p. 121*]

FODIANA, OR TROIA, 121: Besides the sum already offered, another was demanded to cover the burden of the tax on movable property, commonly called "di ricchezza mobile," as stipulated in law 7140. Subsequently, when the Government, after the judgment of April 5, 1895, imposed a new tax on movable property, also retroactive to the year 1893, on the sum owed to the Bishop of Fodiana, the Bishop of Troia maintained that this tax should be borne by the Bishop of Fodiana; however, the latter objected. Finally, in the deduction from the Troia endowment for the purpose of extinguishing the pension debt, the Bishop of Troia wished to include certain items which are required in the territory of Fodiana according to law 2914.63, while the Bishop of Fodiana absolutely refused to allow this. Therefore, the matter concerns not only the revocation or confirmation of the judgment issued on April 5, 1895, but also its interpretation.

A SYNOPTIC ACCOUNT: DEDUCTIONS OF THE BISHOP OF FODIANA.

First of all, the Bishop of Fodiana recalls that his endowment, by virtue of the Bull of His Holiness, provided for the payment of a double pension, one from the revenues of the Municipality of Fodiana, and the other from the revenues of the Troia endowment; and that this latter had always been fully paid before the establishment of the fund; and that after the establishment of the fund, the Holy Father also stipulated that it should be paid in the same proportion, after being freed from all burdens that might weigh upon the fund, namely, after deducting expenses and any public levies of any kind. Furthermore, the Bishop of Fodiana continues, the provisions of the civil law of Italy do not appear to contradict this. In Article 12 of the law of August 8, 1895, concerning economic provisions, it is stipulated that, with the understanding that the aforementioned tax generally affects the creditor, even if this burden has been generally assumed by the debtor, there is an exception in the case in which the debtor, by a special agreement

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prior to the publication of the law, has expressly assumed this burden upon himself. Therefore, whether one examines the founding Bull of the Fodiana endowment, or the civil law, it is clear that the burden of the tax on movable property is to be borne by the Troia endowment; and the Municipality understood this correctly.

[*Latin ed. p. 122*]

122 FROM THE DECREES OF THE HOLY GENERAL COUNCIL AND THE RULE OF FODIA: He who pays the full pension, accepting such a tax upon himself. Furthermore, the Bishop of Fodia invokes his favor, stating that the diminution of revenues is borne by the holder of the title, not by the pensioner, provided that the holder's due remains intact. Cardinal De Luca (on pensions, Dis. M, n. 4) gives this reasoning: Since the holder of the title is the owner of the revenues, the diminution of those revenues should be borne by him, not by the pensioner; conversely, the increase in those revenues should benefit the holder, without the pensioner being able to claim any share of it, since increase and decrease are consequences of ownership. Indeed, it is true that the revenues of the See of Troia have suffered some diminution, but since the holder's due remains intact, the aforementioned tax should still be levied, and consequently, the assigned pension, as it was originally, must be paid in full. Having established this, the Bishop of Fodia proceeds to another point of the matter, namely, the manner of effecting the separation of the principal sum in favor of his See, according to the opinion of the Holy Congregation. He argues that this should be done by withdrawing a portion from the great book of public debts, a portion that benefits the See of Fodia and yields an annual revenue of 7140 florins, and furthermore, another portion should be added to bear the burden of the tax commonly called "di ricchezza mobile," which taxes movable property; he cannot agree with his brother Bishop that, in this separation, the censuses and canons to be collected in the city of Fodia, amounting to an annual sum of 2914 florins and 63 baiocchi, should be included, both because these are difficult to collect, and because they may also be uncertain in the course of time. Moreover, from the aforementioned Bull, the pension must be certain and invariable, and for the security of the pension, all the revenues of the See of Troia are pledged, to be paid in full from all the fruits and revenues of the See of Troia, as is stated in the Bull repeatedly cited. Since the pension is privileged, it is not within the power of the Bishop of Troia, as the debtor, to substitute it with other, even uncertain, assets, as he would like. THE RIGHTS OF THE BISHOP OF TROIA.

[*Latin ed. p. 123*]

FODIANA, or TROIA, observes that the new tax, commonly called the "tax on movable property," imposed by the Government after the decision

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of the Holy Congregation on April 5, 1895, differs greatly from that which burdens the entire income of the Troia table; for the former is specific and directly affects only the sum due for the pension to be paid to the Bishop of Fodiana. As ministerial decisions also state, this is to be supported by the Fodiana table, and although, in fact, it is paid by the Troia table, the former has the right of recourse against the creditor table; and that this should be so is also suggested by the principle of equity, otherwise the Troia table would pay the same tax twice. There is only one way to avoid this new tax, namely, the separation of the pension due to the Fodiana table from the Troia table. However, if this separation has not yet been effected, it remains to be done by the Bishop of Fodiana, who has raised several objections to this proposal. Meanwhile, the Bishop of Troia has paid more than 2000 florins for this special tax, and will pay others, the restitution of which he demands from the Bishop of Fodiana. Regarding the method of effecting the separation of the capital sum, the Bishop of Troia, in a letter to the Holy Congregation dated April 25, 1897, stated that it seemed entirely just that this should also include the canons and dues which are collected in the city of Fodiana for 2914 florins, 63 sols. I. Because it is an expensive matter for the Bishop of Troia to collect these, whereas for the Bishop of Fodiana, there is no expense. II. Since the pension affects all the income of the Troia table, which is now made up of canons and public debt installments, it is just that the capital sum representing it should now be composed of two heads. Furthermore, the Bishop of Troia points out that the separation must be made only in the capital sum which yields an annual income of 7140 florins; any other sum claimed by the Bishop of Fodiana for the support of the tax on movable property cannot in any way be granted; because this second separation would be rejected by the Government, since the Government holds that such a tax is to be supported by the Bishop of Fodiana.

[*Latin ed. p. 124*]

From the Acts of the Congregation of Bishops and Regular Canons: Finally, the Bishop of Troia, on the nineteenth day of July, 1898, requested that the aforementioned separation be carried out even without the consultation of the Bishop of Fodera, pending the resolution of the Holy Congregation. And secondly, that a special tax on the use and enjoyment of the Fodera pension be imposed, as required by law from the Bishop of Fodera; for although, according to civil law, the Bishop of Troia, as the debtor, must pay this tax, it is granted to him the right of compensation in the payment of the pension. After considering both of these matters, the following questions were proposed for resolution: 1. Whether the decision of April 5, 1895, in case number 2, should be confirmed or revoked. 2. Whether a new tax, commonly called "DI RICCHEZZA MOBILE," should be borne by the Bishop of Troia or the Bishop of Fodera. 3. How should the right of the Bishop of Troia be understood with regard to the separation

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of the pension owed to the Bishop of Fodera, that is, whether the Bishop of Troia is obligated to deliver to the Bishop of Fodera the principal sum which yields 7140 florins, or a sum which yields 7140 florins after the tax has been deducted.

RESOLUTION: The Holy Congregation of Bishops and Regular Canons, on the twenty-fourth day of March, 1899, after carefully weighing all the relevant considerations, responded as follows: 1. The judgment should be confirmed with regard to the first and second points; regarding the third point, provision will be made in the response to the third question. 2. The tax should be borne by the Bishop of Fodera. 3. The separation of the principal sum should be made according to the standard of the Bishop of Troia of April 25, 1897.

[*Latin ed. p. 125*]

125 FROM THE HOLY CONGREGATION OF RITES IN ROTHOMAGEN. Concerning the canonization of the Blessed John Baptist de La Salle, founder of the Congregation of the Brothers of Christian Schools. ON A DOUBT: Whether, with the approval of two miracles, it is permissible to proceed to the solemn canonization of the same Blessed one. The Church of Christ, like a cultivated field, diligently and vigilantly tended by the hand of its Lord, does not display a single type of flower. Similar to the same queen, it is adorned with variety. For although the entire law is contained in the precept of double love, the reason for charity manifests itself in many ways, according to the various conditions of human life and the opportunities of the times. Thus, as God excited the prodigies of his virtues appropriate to each age, so at the end of the seventeenth century, he gave a man who, at that time, was desired, to provide for the holy education of poor children! This distinguished founder, who has deserved much from the Church and from civil society, was John Baptist de La Salle. After completing his studies in the Parisian college of Saint Sulpice, he was ordained a priest; and in this office, his gravity and prudence shone so brightly that he was immediately placed at the head of a society of priests, whose task it was to bring back to the good flock the faithful of a certain neighborhood. But the work that remained most salutary for John Baptist was the pious instruction of poor young people; and, as if by divine counsel, he gradually and almost unknowingly approached this task. First, through the work of Roland, who employed a teacher of piety, he was appointed to lead a community of Sisters of the Infant Jesus, to properly instruct girls in need; and the schools of this institute flourished so quickly that they aroused the desire in everyone to provide for the education and salvation of boys in a similar way. The work, which began with humble beginnings, first in the establishment at the Court of Saint Maur, and then, not content with the boundaries of the Diocese of Reims, nor even of France itself, grew far and wide, so that in the year 1725, almost six years after the death of the saintly

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man, the flourishing institute was reported among the number of pious congregations by a Bull of Pope Benedict.

[*Latin ed. p. 126*]

126 FROM THE SACRED RITUALS, paragraph XIII, "In the seat of the apostolic dignity." In this ministry, it is wondrous how much the man's charity manifested virtue. For he did not hesitate, in order to acquire sons for Christ, to renounce honors, to expose his family to hardship, to be held in contempt, and to suffer all things from the hatred of many, especially those who favored the Jansenist faction, and to show himself a great man in the defense of his name. To these things pertaining to the public office of an instructor, he added the greatest domestic virtues. For he was a singular example during his life, with remarkable humility and obedience; burning with the same ardor of piety; excelling in chastity, in remarkable prudence, in abstinence, in admirable austerity. With these virtues, the fame of his deeds turned the minds and eyes of all towards him. And when these were confirmed by miracles, and those miracles had been duly proven, the SUPREME PONTIFF LEO XIII bestowed upon him the honors of the Blessed. Soon, the cause was raised again, and an investigation was instituted concerning two miracles, and the same Most Holy Pope solemnly decreed, on the eve of May, of this year, that both were to be considered. One thing remained, according to the statutes of this Sacred Tribunal, to inquire whether the honors of the Blessed could be granted to Blessed John Baptist de La Salle. Therefore, in the general assemblies of this Sacred Congregation, held before the Most Holy Lord, on the third day before the Kalends of June of the present year, His Eminence, Cardinal Lucidus Maria Parocchi, Bishop of Porto and Santa Rufina, Relator of this cause, proposed the following question for discussion: "Whether, with the approval of two miracles, it is permissible to proceed to the solemn canonization of Blessed John Baptist de La Salle?" All those present, both the Most Reverend Fathers Cardinals and the Fathers Consultors of this Sacred Congregation for Rituals, gave their votes. His Holiness, desiring to implore the light of heavenly wisdom, postponed giving his judgment. But today, on Sunday, the fifth day after Pentecost, on which the feast of the Visitation of the Blessed Virgin Mary is celebrated, after having piously celebrated the Eucharistic sacrifice, sitting in this Vatican Aula Pontificia, he ordered that the Most Reverend Cardinals Camillus Mazzella, Bishop of Praeneste, Prefect of the Sacred Congregation, and Lucidus Maria Parocchi, in place of the Sacred Vicar of the City, and also John Baptist Lugari, Promoter of the Holy Faith, and myself, the undersigned Secretary, be summoned to him, and solemnly...

[*Latin ed. p. 127*]

From the Sacred Congregation of Rites, number 127, it was declared: "It

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is permissible to proceed to the solemn canonization of the Blessed John Baptist de La Salle." Furthermore, it was ordered that this decree be made public and recorded in the acts of the Congregation of Sacred Rites, and that Apostolic letters, sealed with the leaden seal, be issued concerning the solemn rite of canonization, to be celebrated whenever desired in the Patriarchal Basilica of the Vatican. This was ordered on the sixth day before the ides of Quintilis, in the year 1899.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites.

L. S. DIOMEDBS PANICI, Secretary of the Sacred Congregation of Rites.

Concerning the beatification and canonization of the venerable Servant of God, Bernard Maria Clausi, a priest of the Order of the Minim Fathers of Saint Francis of Paula.

At the request of the Reverend Father Augustine Donadio, a priest and general postulator of the Order of the Minim Fathers of Saint Francis of Paula, His Eminence and Most Reverend Cardinal Miecislaus Ledochowski, in the Ordinary Sessions of the Congregation of Sacred Rites held at the Vatican, signed on the date indicated, and in accordance with the Apostolic provisions of the years 1878 and 1895, proposed the following question for discussion: "Does it appear from the proceedings that the processes, both those conducted under Apostolic and Ordinary authority, are valid; that the witnesses were duly examined, and that the testimonies produced were legitimately obtained, in the case and to the extent in question?"

Furthermore, the Sacred Congregation, after carefully considering all matters and having heard the Reverend Father John Baptist Lugari, Promoter of the Holy Office, deemed it advisable to write, stating that, with the exception of the witnesses in the Roman process who speak of the presumed miracle and the requested healing, the additional proceedings conducted on those same articles appear to be in order.

June 6, 1899.

Subsequently, a report was made to His Holiness, Pope Leo XIII, by the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, concerning these matters. His Holiness approved and confirmed the decree of the Sacred Congregation itself, and also granted the requested healing, on the twelfth day of the same month and year.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites.

L. S. DIOMEDBS PANICI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 128*]

128 FROM THE HOLY CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION: A QUESTION is posed concerning whether one can grant absolution, without adding any further penance, to someone who absolves a complice, in the case where neither the confessor nor the

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penitent can write to the Holy Penitentiary.

Most Blessed Father, the priest Titus traveled to a foreign region to confess a sin reserved to the Supreme Pontiff. He declared to the confessor: 1. that he could neither perform the works of his ministry, nor use the substance of his possessions, to again undertake the journey to receive the response from the Holy Penitentiary; 2. that it would be too burdensome for him to present himself to another confessor in his own region, which he clearly wished to avoid by taking this journey.

Having explained these matters, the Bishop N. humbly requests from Your Holiness, according to his judgment, whether the aforementioned case, even if it concerns the absolution of a complice, should be included among those foreseen in the Decree of the Holy Office of November 9, 1898 (1), and whether the confessor can, according to the aforementioned Decree, grant absolution without recourse to the Holy Penitentiary, or not.

On Thursday, June 7, 1899, in the General Congregation held by the Eminent and Reverend Lords Cardinals General Inquisitors, concerning the aforementioned question, the same Eminent Lords, after the vote of the Most Reverend Consultors, ordered that the following response be given: It is not understood.

On the following Friday, June 8th of the same month and year, during the usual audience granted to the Reverend Father Assessor of the Holy Office, after a report on all matters was given to His Most Holy Lordship, the same Most Holy Lord approved the response of the Eminent Fathers.

I. CANON MANCINI, Secretary of the Roman and Universal Inquisition.

(1) This Decree was reported in Volume XXXI, page 402.

[*Latin ed. p. 129*]

129 FROM THE HOLY CONGREGATION OF THE COUNCIL OF BONONIA, CONCERNING THE REMOVAL OF A HOLY IMAGE, dated January 28, 1899, and June 17, 1899. Session 25, chapter on Invocations of Saints. The essence of this controversy, regarding the additions, is not disputed, but can be explained briefly. The matter concerns a certain holy image of the Blessed Virgin Mary of the Most Holy Rosary (commonly called "of Pompeii"), which, as it is said, is excellently depicted, and which was offered, along with its crown or frame, by two sisters named Frencia, in May of the year 1888, to the parish priest of Saint John the Baptist (commonly called "of the Celestines") in the city of Bononia, with the condition that this image, which was not yet venerated in the city, be exposed for public worship, whereas everywhere in other cities and towns throughout Italy, it had long been venerated with great devotion. The parish priest gladly accepted the pious offer of the sisters Frencia, and immediately decided to put it into effect, intending to place the image as

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a smaller panel, commonly called a "sottoquadro," on the altar dedicated to Saint Michael the Archangel; which was done after the larger panel of the altar and other new furnishings suitable for the placement of the holy image had been prepared. From the beginning, everything proceeded smoothly; indeed, devotion to the holy image was widely aroused in the city, and the number of people who came to pray before the altar of the Blessed Virgin increased daily. Meanwhile, the sisters Frencia, who were constantly concerned about the veneration of the image of the Blessed Virgin, were always present to assist the parish priest with advice and encouragement, and they worked diligently to create new and magnificent decorations, using money collected from the offerings of the faithful, which they deposited with the parish priest.

SUMMARY OF THE FACTS. Acts, Volume XXXII, page CCCLXXV. 9.

[*Latin ed. p. 130*]

150. In the First General Council, the flaw in the initial contention, which occurred at the beginning of the year 1891, between the parish priest and the sisters, concerned the ownership of a donated painting; the sisters claimed ownership of it, and even the intervention of a procurator was involved. To prevent any future access to this controversy, the parish priest agreed to draw up a public document by which the ownership of the painting would be granted to the sisters of Frencia, under the obligation of allowing the aforementioned image to be displayed for public veneration; provided, however, that the approval of the Archdiocesan Curia was obtained. However, the requested document was not drawn up, because the sisters, when asked to contribute their signature to it, as a form of penance, tore up the document with their own hands, as the parish priest reports. Approaching the month of May of the same year, 1891, because the parish priest did not consider it appropriate to grant the requests of the sisters, who sought to hold grand festivities in honor of the Blessed Virgin, and to establish a pious association under the invocation of the Blessed Virgin of the Rosary, these same sisters appealed to the Most Reverend Cardinal Battaglini, who ordered the parish priest to satisfy their wishes. But events are now reported that are not without contradiction; indeed, the accusers accuse the parish priest of being negligent and unconcerned about the worship of the Blessed Virgin; the parish priest, on the other hand, accuses the sisters of being immoral and troublesome women, disrupting the parish ministry and seeking to impose their will on everything, ignorant of matters. The parish priest said: "It was desired that the entire liturgy be subjected to that painting." The outcome of the aroused controversy was this: the parish priest, at the end of May, after the image of the B.V. had been displayed on the main altar, and was to be restored to its original place, decided to remove it from the church and return it to the sisters, which he notified them of on May 30th, replacing

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the aforementioned image with another image of the B.V. of St. Raphael. And on the first day of June, this plan was put into execution; and to this day, the image of the Blessed Virgin of the Rosary is venerated in that altar, having replaced the one donated by the sisters.

[*Latin ed. p. 131*]

BOLOGNA. 151. The crux of the present matter lies here. The Sisters are greatly distressed by the violation of the devotion to the Blessed Virgin, and by the violation of a solemn promise made to them, and therefore they demand that the image be restored to its proper place. On the other hand, the Parish Priest asserts that he removed the image by order of the Most Reverend Archbishop, who, convinced that it was impossible to maintain order among the Sisters of France, decreed that the image be removed and returned to its rightful owners. The Parish Priest supports his assertion, primarily, by repeated testimonies of the Very Reverend Nicolai Zoccoli, Titular Bishop and Vicar General of the Bologna Curia; of the Prelate of the Archdiocesis of Bologna, Cardinal Battaglini. Furthermore, he presents the testimonies of other men who were involved in the controversy or who have certain knowledge of the facts. The Sisters of France vehemently deny the Parish Priest's assertion, and have long since placed their entire defense in a certain document, or written text, which Cardinal Battaglini wrote on June 1, 1891, on the back of a petition presented to him by a lawyer named Actricum, while she was staying in the town of Mirabello for the sake of her health. I will present the text of this writing below. There is also great controversy and a serious history regarding the meaning and validity of this writing, and its presentation. Because in this letter, the Cardinal speaks of a judicial process that he was undertaking regarding the matter, and therefore it seems appropriate to not introduce any changes until the definition of the matter was determined by a judge; the petitioners infer that this is a true restraining order, and therefore an order was given to the Parish Priest not to change the state of affairs. The Bologna Curia, on the contrary, asserts that it was not a restraining order that was issued, but rather an instruction was given to the Vicar General to resolve the matter according to the Archbishop's instructions, if the facts were as they were explained in the petition. The petitioners, insisting on their intention, have demanded from the Curia since 1892 that they be given such a document, so that Ar-

[*Latin ed. p. 132*]

152. The bishops of the Most Holy Council confirmed the will of the superiors and, therefore, the injustice done to them; but in vain, because the Curia continued to refuse to present this document, asserting that it either did not exist, or more clearly affirming that it was not a legal document, but a letter containing instructions given by the Very Reverend

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General for his own actions, and submitted to his discretion. However, at the insistence of the Sacred Congregation, a copy of this writing, which had been sent by the Curia the previous February, was presented, and its authentic copy was compared with that of the plaintiffs. Thus far, the history of the controversy; now, the history of the judicial proceedings. In truth, the plaintiffs, on June 3, 1891, approached the Praetor of the civil court of Bologna, initiating a possessory action against the removal of property, claiming that they had been deprived of their sacred image without any legitimate cause. However, the Praetor, considering that the tabernacle had been permanently destined for public worship, denied the plaintiffs' claim of possession; and, by his judgment of January 30, 1892, rejected their appeal. The judge of appeals fully confirmed the judgment of the first instance on May 26, 1892. Then, the Sisters Frencia appealed, on August 18, 1892, to the Sacred Congregation of Bishops and Regulars, raising the question both of possession and of the petition, since they requested both the restoration of the sacred image to its former place and that judgment be rendered against the parish priest and the Curia for the injustice done to them. The petitioners insisted that the cause be debated in plenary sessions; but, because they had not sufficiently proven their course of action in approaching a lay judge, since it was not established that they had obtained the permission of the Archbishop, and because the Bologna Curia asserted that the parish priest had been merely the executor of the decree of the Most Reverend Archbishop, a decree was issued on September 5, 1893: "Having considered the matters presented, there is no basis for the proposition of the cause; therefore, it is dismissed." But, subsequently, the sisters, defeated and suppli-

[*Latin ed. p. 133*]

BONONIA. The thirteen sisters, filled with complaint, presented a petition to the Most Blessed Father, from whom we enjoy such tranquility, demanding that the cause be referred to the Sacred Congregation of the Holy Office: The Most Blessed Father considered that some satisfaction must be given to the prayers of the petitioners; and, after hearing the opinion of the Cardinal Prefect of the Congregation for Extraordinary Affairs, he decided that the matter should be discussed in a plenary session of this Congregation, in order to further investigate whether the sisters of France had appealed to a secular tribunal justly or unjustly. This concession did not please the petitioners; they objected that the Congregation was becoming suspect to them because of the decree that had been issued. They insisted; and therefore, while these sisters vehemently protested that they would never allow the cause to be examined by that Congregation, they constantly urged that the controversy be settled by the Sacred Congregation of the Holy Office, or by some other tribunal of the City. The Most Holy Prince, most graciously deigning to receive the petitioners' request, ordered on

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July 24, 1897, that the definition of the cause be referred to the judgment of the Sacred Congregation of the Holy Office. A summary of the arguments: THE RIGHTS OF THE SISTERS OF FRANCE. The petitioners state, among other things, that at the time of the alleged dispossession, on June 1, 1891, they found themselves in peaceful, public possession, or quasi-possession, of the Tabernacle of the Blessed Virgin of the Most Holy Rosary of Pompeii; but that they enjoyed a better form of possession, namely, that which descends by the right of property. It cannot be said that things dedicated to divine worship are absolutely incapable of private ownership. For, since they are material, they can be in the domain of private individuals, as is held by the Holy Roman Church in the case of Calcagnino, June 23, 1742, in the Translation of the Image, § 4, where it is stated: "Therefore, according to the most accepted tradition, it is not fitting that sacred things should be in the domain of anyone, and that anything should be disposed of concerning them, except without the stain of simony; but, as this very image can truly be called sacred, it does not follow that, by reason of the material and the work made of it, it cannot be in our domain, and that, by reason of the same work and material, we cannot dispose of it without any danger of simony, according to..."

[*Latin ed. p. 134*]

134 From the distinction transmitted by St. G. Council, as found in Gonzal., chapter 12, number 8, concerning Simon. Such possession, or quasi-possession, has also been admitted by the civil tribunal itself. Furthermore, the plaintiffs claim that Cardinal Battaglini, through his decree of June 1, 1891, solemnly recognized their possession and intended to protect it, prohibiting any alteration. Therefore, the right of the sisters Frencia to have the image of the Blessed Virgin restored to the altar rests on three reasons derived from nature. The plaintiffs adduce these reasons first, from a vow which they claim to have made to publicly venerate such an image, initiated by a pious deceased person; second, from a contract entered into with the parish priest of Bacchi, by whom the image was given to them to be perpetually exposed to public veneration; third, from the thing itself, or the subject matter. It is certain that the image was of such a nature that it had been blessed, and its destination was confirmed by the Holy Father, and it had been exposed to public veneration for three years; and therefore, it had become a sacred object. This object, having come from private property and commerce, cannot be returned to that sphere, according to the rule: "Once dedicated to God, it is no longer to be transferred for further human use," Reg. 51 in 6. Reiffenstuel writes: "Things which, through consecration or blessing, have been made sacred or holy, such as churches, altars, cemeteries, processional objects, chalices, patens, ecclesiastical vestments, and other sacred furnishings: also monasteries, hospitals, and other pious places, by the authority of the people or the Bishop, are no longer to be

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transferred or used for profane or secular purposes, but for divine use or sacred ministry; and the reason is that the reverence due to these sacred or holy things rightly demands that they not be further applied to profane, secular uses, since he who does so commits sacrilege." This agrees with the canonical text: "He who thinks that what he has given to the Church can be taken back commits sacrilege," Dec. caus. 17, q. 4, cap. 2.

[*Latin ed. p. 135*]

BOLOGNA. 135. Regarding this matter, sacred images cannot be brought back into commerce, lest the one who does so be guilty of sacrilege; and the reason for this is noted by Fargna in *De iure patronato*, part 2, chapter 4, section 5, number 4: "By this assignment and offering of ornaments made by the patron of his own chapel, these things have become sacred and dedicated to God, and therefore the patron cannot demand that they be returned to him in this case, nor can the Rector of the church in which the patron's chapel is located return them to the patron, but they must remain in the church being newly constructed, since it is well known that sacred and to God dedicated things, and those destined for divine worship, cannot be subject to any commerce, nor can they be converted or transferred to profane uses or to secular persons." Ferraris, *V. Imago*, number 37: "Devotional images cannot be transferred from one church to another without Apostolic approval, and if such a transfer has already been made without such approval, it is not valid and is not to be approved." Sacred Congregation of the Holy Office, *Nullius Ferentilli*, July 31, 1706, reported by Cardinal Peter in the *Commentaries* to the Constitution *Paulinam*, volume 5. Roman Rota, before Calcagnino, March 17, 1738. "From Włocławek, concerning the translation of an image, Monday, March 17, 1738. "By an admirable and memorable event, John Henry Zmieszkallo discovered the image of the ever-blessed Virgin, which he had given to his son, then the parish priest of the church of LÃ¼beck, belonging by right of patronage to the knight Peter Garnerius, and also to the parish priest of the same church, the aforementioned John Henry; and which, being publicly exposed there, was very devoutly frequented by many due to its numerous miracles. "When the General Vicar of Włocławek later, without any manifest cause, secretly hid it in the Episcopal Chancery, the news of this removal caused the aforementioned knight Garnerius great distress, and, after making fruitless requests at the Episcopal Court, he considered it appropriate to appeal to the Sacred Congregation, so that it might order the aforementioned image to be restored to its former place."

[*Latin ed. p. 136*]

136 FROM THE HOLY GENERAL COUNCIL: "The Most Wise Fathers, however, with that prudence which is their characteristic, and in accordance with custom, first wished to be informed of the truth through an

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official report from Breslau, and after receiving it, on February 7, 1735, they decreed – leaving it to the Ordinary to proceed as he deemed fit – that the esteemed Vicarius General and his Assessors had rightly decided that there was no basis for the requested restitution of the sacred image, and therefore it could neither be granted nor should be. "Feeling the great injustice thus inflicted upon him, the aforementioned Grarnerius immediately renewed his appeal to the esteemed Holy Congregation, which, having considered the matter, and exercising its right of appeal, decreed... Therefore, the following question was raised: Whether the image of the Most Holy Virgin, having been transferred from Lübeck to Breslau, should be restored to its former place, or rather, whether it should be returned to its owner, especially since, in this case, and with persistent, prolonged silence, the Promoter of Justice of the Episcopal Curia of Breslau, this morning, for the information of those present, has reached a resolution. "Although we do not wish to cast aspersions, it is noted that the Ordinaries of places are to exercise the greatest vigilance, or care, concerning the veneration of sacred images, which has also been sanctioned by the Ecumenical Councils of the Holy Church, especially the Council of Nicaea, as is stated in the Council of Trent, Session 25, on the Purification; St. Jerome, *In Galatas*, Homily 4, on the Resurrection, chapter 7, paragraph 8; Vasquez, *Tractatus de Adoratione Imaginis*, Book 3, Disputation 3, paragraph 8; Cardinal Bellarmine, *Controversiae Christianae*, Book 7, Chapter 1; Paley, *Horae Paulinae*, Volume 1, Book 7, Title 1, paragraph 147; nevertheless, from the earliest times of the Catholic Religion, with the consent of the Saints and Fathers, the veneration and honor have been attributed to sacred images, from which the faith and piety of the faithful towards God are more readily fostered, as the Divine Thomas reminds us in 2-2, Question 103, Article 3, and in 3 Distinct, Question 1, Article 2... and from the sacred Canons, Chapter "Venerables from Consecrations," Dist. 3. The Council of Trent, aforementioned, Session 25, most widely approves this, as does St. Blasius of Purification in his *Tractatus de Adoratione*, Disputation 3, almost throughout."

[*Latin ed. p. 137*]

BONONIA. 137 "Now, since, after the acts of the process concerning the parts, transmitted to the City under the force of the aforementioned Compulsory Decree, a review of those same acts has revealed nothing that would be detrimental or prejudicial to the aforementioned praiseworthy Catholic Institute, it easily follows that the aforementioned Image of the Blessed Virgin Mary should be restored to the faithful for veneration. For it is not permitted to anyone to paint or sculpt any image in the Church that is unusual, nor to display it without the consent of the Bishop, lest anything be contrary to the truth of the Scriptures, traditions, or ecclesiastical histories; however, this prohibition does not include images that are

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customarily venerated, of which, without a doubt, the Most Holy Virgin is of this kind, as Pignatelli clearly states and demonstrates in *Consilia*, 186, volume 9. "Therefore, if no reasonable and just cause has been presented in the aforementioned acts of the process that is adverse to the Catholic and praiseworthy nature of this most ancient and always praiseworthy rite of the Catholic Religion, for which reason the aforementioned sacred Image should not be restored to its former place, then it is fitting, and indeed in accordance with the Canon Law, that no legal excuse should be offered for refusing the restoration of the same sacred Image to the aforementioned parish church; especially considering the most important law, according to which, according to the aforementioned Canon Laws, the alienation or disposal without the permission of the Apostolic See and other legally required formalities is prohibited, not only of immovable property, but also of valuable movable goods belonging to the Church, as Canonists commonly point out in *Extravagantes* concerning *Ambitiosa*... Therefore, since, beyond all doubt, among the most precious things of the aforementioned parish church, the aforementioned Image, of which we are speaking, is foremost, not only because of its excellent and supreme representation (setting aside the material value of the painted panel itself), but also considering the divine miracle by which its discovery occurred; moreover, it is devoutly venerated by the entire population of LÃ¼beck. Therefore, just as the relics and images of the saints are held as the most precious things, and for the most important reasons, among the most precious things..."

[*Latin ed. p. 138*]

138. Concerning the esteemed image of the Blessed Virgin, which is to be restored to the Church of LÃ¼beck, it is evident that it holds a pre-eminent position above the images and relics of other saints, as widely attested by the aforementioned Blasius a Purifie, *disp.* 3, and as confirmed by the accounts in Pignatelli, *consult.* 75, n. 26, vol. 10. "Regarding this matter, it is undoubtedly established that the aforementioned esteemed image of the saint was secretly transferred to the Episcopal Chancery, or to another place, without proper authorization; for it is well known by law that the relics of saints cannot be alienated, nor transferred from one church to another, according to the text in *Beatus Petrus et Paulus*."

"Therefore, since the aforementioned most sacred image has been removed from the aforementioned parish church without the concurrence and verification of the aforementioned circumstances, it is justly demanded that it be restored to its original place, as stated by Ventriglia, vol. 2, note 27, n. 26. "With this, a prejudice is imposed upon the parish of LÃ¼beck and its patron, for since it is evident that the aforementioned image is richly adorned with miracles, and that it has been religiously venerated and enriched with donations generously given by the faithful, and that these donations or alms are rightfully to be used for the benefit of the church where

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the aforementioned most esteemed image is kept, in order to enhance the more elegant and ample adornment of the image itself and of the church; according to the text in *cap. Hanc, caus. 10, quaest. 9, cap. Pastoralis de iis quae fiunt a Praelato sine cons.*"

"Consequently, it is evident that the removal of the aforementioned esteemed image of the saint has diminished the congregation's attendance at the church, and has somewhat lessened the splendor of the aforementioned church; and that a great prejudice has been inflicted upon the aforementioned parish church of LÃ¼beck and its pastor and patron. Therefore, it is justly demanded that the restoration of the image be granted without delay, so that the prejudice may continue to diminish daily, and that it may be increased."

[*Latin ed. p. 139*]

BOLOGNESE. 139. The reason dictates that, since it is not permitted for a Bishop or Ordinary, even by his own authority, to transfer sacred images when the Rector of the Church objects, it follows that... "It is undoubtedly the case that the disputed image was given as a gift to be preserved in memory of the donor; therefore, in order that this memory not perish, or that the pious wish of the giver be erased, and in order that it be preserved as an example, or imitation, for other faithful, as is stated in Rot. dec. 1369, n. 91, cor. Lancetta, where it is agreed, especially because in the judgment concerning its restitution to its former place, the patron himself acts, by reason of his particular devotion, and for the honor and adornment of his parochial church, so that it is indeed permissible to grant assent to such a just and pious petition, as is noted by Felin in cap. Cum Venerabilis, n. 37, de except."

RIGHTS OF THE PAROCHIAL PRIEST. The parish priest mentions two letters, dated August 2nd and September 1st, sent by the nuns, in which, the parish priest notes, no mention is made of the decree issued by the Archbishop to which the parish priest has not given obedience, but rather, he humbly and simply requests that the Archbishop issue a decree for the complete restitution [of the image], and he urgently points out that a single word from the Archbishop is sufficient for the parish priest to obey. Furthermore, certain observations have been made regarding the merits of the matter. And since the matter is being pursued both in a possessory action and in a petition, I will first discuss the possessory action, according to the noted law 12 § 1 ff. De acquir. vel amitt. possessionis: "Property has nothing in common with possession." Therefore, even if the Sisters of France retain ownership of the depicted image, it must be inquired before whom the possession was held. Indeed, from the very assertions of the nuns, it is clear that they have ceased to use the image, so that it may be exposed publicly for perpetual worship; and therefore, it appears that the use established for the service of the parochial church of St. John has limited

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the right of property of the Sisters of France. In the very images themselves, one understands such a service...

[*Latin ed. p. 140*]

140. The safeguards, usage, and usufruct, as affirmed by the Sacred Council, are confirmed by Fagnanus, who states in chapter 15 of his *Pastoralis*, concerning those things done by Prelates: "A private person cannot possess offerings or the usufruct of any religious object, such as paintings or images of the Saints, etc." Furthermore, the positive laws of Rome and canon law have determined to protect the free exercise of these rights, not only through ordinary legal remedies, but also through possessory actions; establishing these rights as a form of quasi-possession. Regarding this matter, Reiffenstuel, in common with the Canonists, in title *De causa poss. et propriet.*, number 6, states: "Therefore, incorporeal things, since they cannot be physically grasped or detained, are not properly possessed, but are said to be quasi-possessed; as is evident from canon *Cum Eccles.*, heading 3, and canon *Constitutus*, 16, concerning jurisdictional matters, where the Pontiff speaks of the possession of the right to choose, as a form of possession." The Glossa, in the cited chapter, verse *Quasi possessione*, extends this to all spiritual rights and servitudes; argument 1. Furthermore, it follows that, according to the sections on usucapion, the text in 1 states: "If anyone has acquired the right to draw water through long-standing usage and prolonged quasi-possession." Therefore, this quasi-possession of the use of the image pertains to the user or the parish church and the Christian people who have made use of it, as well as to the Sisters of [Frencia], not because they possess ownership of the image, but because they are included within the Christian people. However, indirectly, or because canon law also admits of popular actions, as explained by Cardinal De Luca in *De iud.*, discourse 12, number 6, the plaintiffs could be understood to be bringing this action on behalf of the Christian people, who are prohibited, through the removal, from venerating the image. But Paul, in his work on popular actions, has already explained the nature of a popular action, stating: "We call a popular action that which protects the right of the people." Therefore, it is incongruous to admit the exercise of this action when the people have not clearly indicated that their right has been violated. However, the records show that the faithful were warned about the removal of the image.

[*Latin ed. p. 141*]

BONONIA. 141. Neither did anyone object, nor did they give any signs of disapproval, when offerings were brought to the altar of the Blessed Virgin. Therefore, the Most Reverend Fathers will deliberate whether there is a cause for an action of possession in this matter. For the moment, a preliminary step must be taken to initiate a lawsuit, in which the plaintiffs

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claim that they have suffered an injustice due to the breach of a pact made with the parish priest. However, a preliminary question could be raised as to whether such a pact is valid, since it does not have the approval of the Archbishop, as evidenced by the documents. Indeed, the Council of Trent, session 25, concerning the invocation of the Saints, states: "The Holy Synod decrees that no one, in any place, or church, even if it is exempt in any way, may place, or cause to be placed, any unusual image, unless with the approval of the Bishop." However, as Pignatelli teaches in canon 186, volume 9, such a prescription does not seem to apply to images that are commonly venerated, the veneration of which does not cause any scandal or prejudice among the Christian people. Nevertheless, it is certainly the duty of the Bishops to order that no image be exposed for public veneration without their approval, in order to prevent all kinds of disturbances. The pact, concerning which we are speaking, to the extent that it had any validity, only served to grant the parish church the right to use the image, and in no way transferred ownership; therefore, it cannot be invoked in accordance with the prescription of the Constitution *Ambitiosae ordinatum* concerning the alienation or diversion of Church property. In this regard, the authority of Cardinal Petrucci in his commentary on this Constitution is relevant: "This Holy Congregation denied permission to the Abbot General of St. Basil the Great to give a relic of St. Pancratius to the clergy of a certain place in Sicily on January 14, 1792. And also, in the case of the translation of a devotional image from one church to another, it is necessary to obtain the approval (namely, of the Holy See), and the Holy Congregation judged that it should not be sustained or approved, as stated in *Nullius Ferentilli* on July 31, 1706. Furthermore, the use of an image, such as its being displayed, is not a matter of great value, as is the case with a painted picture."

[*Latin ed. p. 142*]

142. This [matter] is understood to be of estimable value, insofar as it concerns the offerings and alms of the faithful, as is evident from the cited text of Fagnani, or insofar as use entails usufruct. But, in this case, another Image of the Blessed Virgin of the Rosary was substituted, and all assert that the cult suffered no detriment, nor did the Church lose the alms of the faithful; which is consistent with the truth, since it was not a matter of an ancient Image, distinguished by its antiquity and miracles, but of an Image recently displayed and depicted. Therefore, in removing this Image, no alienation of ecclesiastical rights seems to have occurred; nor is the approval of the Holy See required. Rather, the entire matter pertains to that right which the Bishop possesses, to regulate and safeguard the divine cult according to the norms of law, as expressed in the Tridentine decree cited above: "Finally, let such diligence and care be employed by the Bishops, that nothing disordered, or arranged rashly and tumultuously, nothing

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profane, or dishonest, appear, for the House of God deserves sanctity." However, the matter in question does not concern varying or prohibiting the cult, but only the material substitution of the Image; or, it concerns a renunciation of the right of use; that is, the initial contract. The parish priest asserts that he renounced this right and worked for the restitution of the Image at the command of the Archbishop. Indeed, if this is admitted, there is no difficulty in saying that such a rescission of the agreement is valid and firm, since the Prelate has judged this to be good and opportune. However, if the parish priest, of his own accord, relinquished this right, it would still seem that such a deliberation is to be maintained, since it appears from the records that this agreement was initiated only by the parish priest, without the consent of the curia, and just as any matter is dissolved by the same causes by which it arose, so too is this. Furthermore, there is no doubt, according to the opinion of the parish priest, that this removal has brought considerable benefit to both the parish priest and the Church.

[*Latin ed. p. 143*]

BONONIAN. 143. Furthermore, it must be stated, in any hypothesis, that the consent of the Archbishop was not lacking, indeed, through his approval; for, having removed the image, he could have commanded its restoration with his own authority, but he did not command it, nor did he protest against the removal of the image to its former place, from which it follows that Rule 10 of canon law, in Title 6, is valid: "An approval and a mandate are not to be equated." However, the principles invoked in the decision of the Roman Rota in the case of Władysław appear to pertain to a different situation, because there, the removal was made by the Vicar General, without the consent of the parish priest, of an ancient and miraculous image, which could not be replaced and which enjoyed the special veneration of the entire people. Certainly, the Vicar General cannot alienate that which belongs to the patrimony of the Church. In another decision of the Roman Rota, before Calcagnino, on June 23, 1742, the matter concerned a sacred image depicted on the exterior of a certain house belonging to some nuns, a house which was located within the boundaries of the parish of the Basilica of the Lateran. The issue was the transfer of this sacred image, to which a large number of people were accustomed to come, and to whose feet offerings were brought. Both the parish church and the nuns claimed the sacred image, and the Roman Rota awarded it to the church of the nuns. With these considerations in mind, the following questions were proposed: I. Whether the image of the Blessed Virgin Mary of the Rosary was lawfully removed from public veneration in the aforementioned case. II. Whether there is a place for the restoration of the sacred image to its former place and for the restitution of damages in the aforementioned case. RESOLUTION. After deliberation, the Sacred Congregation decided on June 17, 1899, to respond as follows: To I. Affirmative, and moreover. To II. Negative, and

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moreover.

[*Latin ed. p. 144*]

144 FROM THE DECREE OF THE COUNCIL OF FORLIVI REGARDING MARRIAGE, April 29, 1899. Session 24, chapter 5, concerning the reform of marriage. SUMMARY OF THE AGREEMENT. On January 23, 1889, in the Archpriestly Church of St. Cassian, in the Apennines, in the Diocese of Brictinoriensis, Anthony and Joanna entered into marriage, he being 26 years of age, and she 23. Although these nuptials were celebrated three years ago, at which time the betrothed pursued mutual affection, it is reported that the woman changed her mind three months before the marriage; indeed, Joanna would not have married Anthony, had she not been subjected to the coercion of some relatives. But whatever may be the case regarding this matter, it is certain that shortly thereafter, this union had an unhappy outcome. For, scarcely five days after the beginning of the marriage, the woman abandoned her husband, with no intention of returning, primarily for the reason that the husband, Anthony, was entirely incapable of fulfilling his conjugal duties. The Archpriest of St. Cassian in vain attempted to persuade the couple to live together, and questioned them separately about this serious matter, and received from both that they had fruitlessly attempted to have relations with each other, because the husband was unable to fulfill his marital duties by the act of copulation; indeed, the woman added that they had attempted to have intercourse several times before the marriage, but the husband had never been able to penetrate the woman. Regarding this matter, Joanna subsequently sent a petition to the Bishop of Brictinoriensis, requesting that a judgment be instituted concerning the nullity of the marriage due to the husband's impotence. Indeed, the same year, a legal process began in the Curia of Brictinoriensis; but whether this process was brought to a conclusion is not entirely clear from the records. Meanwhile, the man, with impious audacity, in the month of November 1891, entered into new nuptials, as they say, in a civil ceremony, and from this...

[*Latin ed. p. 145*]

FORLIVENSE. He had several children from an adulterous union; therefore, now contrite and eager to legitimize his offspring, he sought recourse to the Most Holy Prince, requesting a dispensation from the marriage he had contracted with Joanna, which could not be consummated at that time due to his temporary infirmity, contracted from a venereal disease. According to the usual procedure, the prayers offered were transmitted to the Forlivense Court, so that a process might be instituted regarding the alleged lack of consummation and the reasons for granting a dispensation. Indeed, the spouses were heard, as well as witnesses from both parties, and also physicians who examined the man's body and treated him for the

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venereal disease. The woman was also accepted to undergo a judicial and medical examination to confirm her virginity; but she refused to undergo this, since she had already had intercourse with another.

SYNOPTIC DISCUSSION.

OPINION OF THE THEOLOGIAN.

Therefore, setting aside the question of the invalidity of the marriage due to fear, it must be inquired whether a dispensation from the marriage itself can be granted. Certainly, the Supreme Pontiff, by virtue of the supreme power he possesses, can grant a dispensation regarding a valid and unconsummated marriage. However, such a dispensation cannot be granted unless it is morally certain that the marriage was not consummated, and there is a grave reason for it. But in the present case, it is certainly established that the man and woman lived together and slept together for five days and nights, and this provides the strongest presumption of the consummation of the marriage, against which no evidence is admitted unless it is fully conclusive. Such evidence is obtained through the sworn confession of the spouses, the testimony of witnesses, and the examination of the bodies, cap. Laudablem de frigid, et malef.; Instruct.

Furthermore, with regard to the depositions of the parties, both the man and the woman jointly affirmed that they had never had intercourse with each other, although they slept together for five nights. But even if the hymen of the woman appears intact, Acta, Tom. XXXII. fase. CCCLXXV. 10

[*Latin ed. p. 146*]

146 Although a considerable time has passed since the General Council, it cannot be said that marriage is consummated without the mingling of seed, from which one flesh is made. Both parties agree equally in asserting the lack of consummation of the marriage and in determining its cause, namely, the inability of the man to cohabit, which the man himself frankly admits. Nor should any collusion between them be feared, because, as both themselves and the witnesses testify, since the day of the separation, they have never had any dealings with each other, nor has either ever seen the other, except once, on which occasion the woman testifies that she was struck by the man. As for the witnesses, although they may not directly and explicitly assert anything about the lack of consummation of the marriage, nevertheless, all unanimously testify to the impotence with which the man suffered, and therefore, they implicitly acknowledge the lack of consummation of the marriage, and all proclaim the sincerity and truthfulness of both parties, although not all have a good opinion of the woman's conduct. But let us hear the doctors who examined the man's body, the first of whom,

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outside of any legal proceeding, and the second of whom, at the mandate of the Court of Brictinori, conducted an examination, as he asserts in his report; and although neither is considered an expert in a judicial capacity, nevertheless, their testimonies, given before the judges and confirmed by oath, are to be considered of the greatest importance. Therefore, Doctor Theodorus Prati, who examined Anthony when he was suffering from illness, testifies: that in this condition of the man, he did not believe that the marriage could be consummated, due to the lack of penetration into the woman's womb; a penetration which was prevented by the illness. Doctor Alexander Amaducci seems to hold a different opinion, who believed that intercourse was possible in the man's normal condition at the time of the examination. Therefore, these two experts seem to contradict each other, because the former denies what the second affirms. But it should be noted that Doctor Amaducci conducted his examination on June 2, 1889, when Anthony had fully recovered from the illness, and therefore, his judgment refers not to the state of infirmity, but to the state of health, when, namely, the man's genitals were...

[*Latin ed. p. 147*]

FOROLIVIEN. 147, having been completely cured of the disease, had regained the ability to copulate. For Doctor Prati asserts that the disease lasted for approximately 50 days, and therefore, in the following month of February, he was completely recovered and capable of copulation. Therefore, it is not surprising that Doctor Amaducci found him capable of copulation in the month of June. Thus, although Anthony had, at that time, been completely recovered from the disease, he still exhibited signs of syphilis, from which arose a temporary and curable anaphrodisia, as was indeed the case, and therefore it must be said that Doctor Prati found Anthony afflicted with syphilis, while Doctor Amaducci, although he had cured him of the disease, still observed signs of the disease itself. Therefore, both doctors agreed that Anthony had indeed been afflicted with a syphilitic disease, and therefore, during the time that he was afflicted with this disease, he suffered from impotence, and was therefore unable to consummate the marriage. Therefore, whether from the mutual confession of the parties, or from the testimonies of witnesses, it seems to me that it can truly be concluded that the marriage was not consummated due to impotence on the part of the man. However, the third condition is lacking, namely, a judicial examination of the bodies of both the man and the woman. But in the present case, such an examination could in no way be carried out. It could certainly not be examined the body of the man, since, having been cured of the disease, he had become capable of performing the act of copulation and consummating the marriage, as was demonstrated by the fact that he had already had two children with the woman, with whom he had lived for several years, united only by a civil bond. Nor could the body of the

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woman be examined, since, according to the testimony of several witnesses, she does not live a virtuous life, and as the Archpriest of St. Cassian stated in a testimony regarding her life and morals, which he presented to the Judge after she left her husband, "public opinion began to speak about her, and still says so, because she is in the service of a certain man, with whom she maintains a bad habit, and it is said that she has borne him two or three children," and when questioned by the Judge whether she was still a virgin, she denied it. After these things, what purpose would an examination of her body serve? Therefore, in this case, the examination was of no importance.

[*Latin ed. p. 148*]

148 From the decrees of the General Council, both of men and of women. To these, it must be added that such an examination, by itself, constitutes only a supporting proof, and it should be used especially when the spouses contradict each other, namely, when one denies and the other affirms the consummation of the marriage; but when both agree in affirming the lack of consummation, and their judgment is confirmed by the testimony of seven witnesses, then, according to c. Laudabilem de frig. et malef., there is moral certainty that the marriage has not been consummated. Therefore, when, from what has been discussed, the lack of consummation of the marriage appears, it remains to inquire whether there are grave reasons for granting a dispensation from this marriage. But such grave reasons are evidently present in the mutual alienation of affections, the reparation of scandal, the legitimization of offspring, and the pacification of conscience, which are reasons sufficiently grave so that one may hope for a dispensation through the benevolence of the Supreme Pontiff. Therefore, in order that I may express my opinion, whatever it may be, I say that the lack of consummation of the marriage is established, and therefore, consideration should be given to the Holy See for a dispensation from the valid, but unconsummated, marriage in this case. OPINION OF THE CANONIST. The consultant said that two things must be investigated in order to exhaust the matter entrusted to him, namely: 1° Whether the nullity of the marriage is established in this case. And, if negatively: 2° Whether consideration should be given to the Most Holy See for a dispensation from the valid, but unconsummated, marriage in this case. Regarding the first question, the words of Hormisda Giunchi, Archpriest of St. Cassian, who officiated at the marriage ceremony, truly pierce the heart. For he asserted that Joanna had been asked twice or three times to give her consent; and Anthony explains the reason for this, saying: "Perhaps she hesitated to give her consent, and because she knew that I had been impotent for three months before the marriage." Considering these things, it is not surprising that the Tribunal of Forlì concluded: "In the progress of the judicial cause, not insignificant

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doubts of nullity have arisen." Indeed, since it is certain that the marriage...

[*Latin ed. p. 149*]

FOROLIVIEN. 149 and, as they say, in fact (Grury de Nat. Matr. art. 1, n. 745), a true or mutual consent, present, deliberate, and voluntary, manifested by external signs, consists in such a way that if something is lacking in it, neither in fact nor in appearance, does the Marriage exist. And since it is said in chapter 14, De Spons. et Matr.: "Marriage ought to enjoy full freedom," which the canonists, vv. so clearly, Deangelis here n. 4 comments: "The Church desires full freedom in marriages, and wants all fear to be excluded," adding in the cited chapter: "lest, through fear, she say to herself what she hates, and follow the consequences that usually result from forced marriages"; it is necessary to conclude that the woman did not give her consent to the parish priest, who judged that the woman lacked internal consent. Therefore, in order to delve more deeply into the question and to judge the will that the woman brought to the act of marriage, and what true consent she actually gave to that act, I believe it is of little importance to dwell on fear, force, or threats, and even on the duties of a mother; for none of these things seem to me to have been of great weight, nor does it seem that a woman could be so seriously disturbed by them. Rather, we must turn to the idea to be considered, and the judgment that was fixed in the woman's mind concerning the positive inability of the man to whom she would be married, whatever that inability might be, which she did not know. Indeed, this should have greatly moved her, when she was certain that that man would be useless to her. Therefore, I believe that she did not enter into these marriages except under the pressure of the importunities of her parents and relatives, in this way: "Let this marriage be done, I will try it out; but if it turns out to be useless, I will leave him immediately, and forever." Now, to what does this disposition of the woman's mind lead? To a consent given under a condition, and under the condition of the present: "I will marry him if he is capable, otherwise I will not marry him, and I will leave him immediately." But the canons and canonists teach that a marriage under a lawful and possible condition is valid, no matter how illicit, or invalid, depending on whether the condition is fulfilled or not; and since the condition

[*Latin ed. p. 150*]

150 From the Sacred Council, it is clear that the obligation, whether concerning the past or the present, is not suspended, but is either immediately confirmed or annulled; chapter V, concerning imposed conditions, etc.; De Angelis, preface to book 4, title 5, paragraphs 1, 3. Therefore, etc. However, it would seem to be an unfair condition in this case, and from chapter 7 of the aforementioned title, it would appear to be invalid. It is unfair in itself, though not necessarily to the sensibilities of the nations; it is unfair

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in regard to the method of verification, which is questionable, and even if I concede this, it does not prevent the conclusion: De Angelis, book 1, chapter 1. However, a condition is considered invalid if it is presumed not to have been seriously intended, and this presumption would yield to the truth in our case; De Angelis, book 1, chapter 1, paragraph 4. Nevertheless, although it emerges sufficiently from the aforementioned passages of the procedural codes and from several others that this was the intention of Joanna in entering into the marriage, further investigation and a more careful examination would make us safer if we were to resolve this matter by answering "Yes." Therefore, I would rather say: "Delay, and proceed with the intention that should be present." Joanna is questioned again on these matters: her deposition should be read, and she should answer the man who asserts that she had carnal intercourse with the future spouse six months before the marriage. If the discussion turns to the second question of the dispensation, two things would need to be seriously considered: that the marriage was not consummated, and that there are canonical reasons for granting the dispensation. Regarding the first point: there is certainly sufficient evidence, considering the testimonies of each other, why the man's assertion that there was no perfect intercourse should be given more credence; this is confirmed by the woman's deposition. There is also sufficient evidence, considering everything that is said by the parties and others, why it should be determined, under some appearance of truth, that the marriage was not consummated in this case. The witnesses, on both sides, are all based on hearsay regarding the consummation and its circumstances; I say hearsay from the parties or the public. Therefore, with regard to this matter, they neither add nor detract from the credibility of the situation. It is particularly favorable that Mr. Prati intervene, to the extent that...

[*Latin ed. p. 151*]

FOROLIVIEN. 151. It is stated that Anthony was treated for a disease, and that this occurred during the months of January and following in the year 1889; 2. That Doctor Amaducci conducted an examination of Anthony, who had already regained his health; 3. That both were present in the first process at Brictinorii, when the man was not yet dispensed; 4. And that both possessed undeniable knowledge and were deeply saddened. Now, Doctor Amaducci from Brictinorii has been called again by the delegation of the Curia of Forolivien. In the Interrogatories 4 and following, he stated what we have mentioned above. It is evident that this distinguished man had set for himself only one goal: to judge only on what he saw. After considering all of this, and especially considering the very short time during which the parties were together, and that during that time the man was undoubtedly afflicted with a venereal disease, they agreed that the matter should be referred to the judgment of experts, and they concurred with

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the opinion of Doctor Prati that the marriage had not been consummated in this case. Nevertheless, since a clearer agreement between the Doctors would greatly contribute to obtaining a moral and external certainty in this case; and since there are reasons to believe that a dispensation could be granted, which we will soon see, and that the matter should be resolved on this basis; with the understanding that there is a doubt: in the second point, I would say: "Let Doctor Amaducci be questioned again and more thoroughly, and afterwards, after Doctor Prati's examination, any exceptions that may exist should be presented; or, let the Reverend Father, the Secretary of the Holy Congregation, inquire of the expert judgment of Doctors regarding the reports and statements of the expert Doctors in this case." Now, let us address the main reasons that favor our case. The suspicion of nullity, which, as we stated at the beginning, should not be dismissed, provides a significant reason. It is the case that, although lacking the legal proofs necessary to validate the marriage, it nevertheless, by its very nature, should move towards granting a dispensation. A very serious reason is the civil bond that Anthony had contracted with Malvina Bargozzi five years ago.

[*Latin ed. p. 152*]

152 FROM THE DECREE OF THE COUNCIL. Nor should this be taken from chapter 14 concerning usury; he who commits a fault invokes the aid of the law in vain. Anthony has been deceived, and those who wish to advise him are mistaken; the Ordinary is the best witness of this. But how can he achieve this now, given the inexorable law and its consequences? Coscius, in book 3, chapter 2, paragraph 106, concerning separations, rightly says: "It is the duty of the Supreme Pontiff to provide for the peace and salvation, both spiritual and temporal, of married couples, to remove the occasions of sin, and to avert the dangers to souls." Furthermore, this is necessary for the legitimization of Anthony's offspring: "Legitimization is often and deservedly invoked in order to obtain a dispensation," says Reiffenstuel, book 4, title 17. Moreover, is there not a serious reason for the bride to obtain a dispensation, since, as it appears, she has lived incestuously and has borne a child once and again?

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The spouses, who are now both opposing the marriage, raise doubts, first concerning the validity of the marriage, as if the woman had married unwillingly, and second, concerning its consummation. But this is unjust. For, concerning the first point, besides the fact that the necessary actions to prove coercion are lacking, there is the decisive confession of Johanna herself: for although she did not initially answer the priest who questioned her, she later gave her consent, as she herself asserted, because she had already decided to enter into marriage. Nor is it necessary to prove that Johanna did not marry Anthony unwillingly. It is indeed surprising that

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Johanna had relations with Joseph Succi, to whom she had given her body no less than to Anthony; but it is more surprising that, when she had relations with him in a state of despair and hopelessness, she chose to abstain from Anthony rather than to be with Joseph, especially since Anthony was not yet fully aware of the illness that afflicted him. As for the alleged lack of consummation of the marriage, since it is beyond dispute that the spouses lived together for five nights, it cannot be maintained unless the woman's physical virginity or the man's impotence is certain. Indeed, it is confessed that...

[*Latin ed. p. 153*]

FOROLIVIEN. 155: It has been alleged that the virginal state of Joanna has been lost, and that the husband, in whom habitual potency has been demonstrated, is afflicted with temporary impotence. However, the reports concerning the examination of Anthony's body by the experts Alexander Amaducci and Theodore Prati do not prove this, because 1° those examinations were deficient in all the precautions required by law in order to be considered valid; and 2° the report of the examination made by the doctor Prati was not written immediately after the examination, but several months later; 3° the doctors do not have certain knowledge of this temporary impotence, but only consider it possible. Furthermore, the most learned opponents wrongly believe that Theodore Prati disagrees with the expert Amaducci. In addition to this, the doctor Prati manifestly reveals his desire to favor the plaintiff. Moreover, when asked, "Does he report the examinations concerning Anthony's illness?" the doctor Prati replies that he does not exclude the possibility of having intercourse and consummating the marriage, even in the infirmity from which Anthony suffers. Nor is the testimony of the spouses conclusive. Firstly, the husband confesses to the consummation of the marriage rather than its lack of consummation. Secondly, even if the testimony of the spouses is consistent, sworn, and confirmed by seven witnesses, it never, by itself, establishes the truth. With these considerations in mind, the following questions have been proposed: I. Does it follow that the marriage is null in this case? And, to the extent that it is negative: II. Should the matter be referred to the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated in this case?

RESOLUTION. The Sacred Congregation, after deliberation on April 29, 1899, decided to respond: To I, negatively. To II, since it does not appear that the marriage was not consummated, the matter is not to be referred.

[*Latin ed. p. 154*]

154 FROM THE DECREES OF THE COUNCIL OF SORANA, April 29, 1899. Session 22, chapter 8, concerning Reforms. In the town commonly called Gallinaro, in the diocese of Sorana, there existed, from very ancient

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times, two parish churches; one under the title of St. Leonard; the other under the title of St. Nicholas; but today, since the churches or their sites have been leveled, only two parish titles remain, which, according to established law, are conferred upon two priests for the performance of parochial duties. However, only one church, dedicated to St. John the Baptist and the Evangelist, is designated for the performance of parochial functions, and this is called their church by both the parish priests. The priest to whom the title of St. Nicholas is assigned is called the Archpriest; the other, to whom the title of St. Leonard is assigned, is commonly called the Abbot. Since both the Archpriest and the Abbot possess the same parochial rights, each administers the sacraments to their respective subjects; and the two parish priests, in turn, perform the sacred functions in the parochial church on alternating weeks, namely, they preach to the people on Sundays, and they teach the Catechism in turn. Nevertheless, it is clearly understood how controversies have arisen between the Archpriest and the Abbot concerning the order of sacred functions and precedence in performing them; therefore, even today, the question is raised before the Sacred Congregation whether the right of precedence and honor belong to the Archpriest in more solemn functions. Furthermore, there is another and more serious source of discord in the constitution of these parishes. Indeed, each of the parish churches formerly had several dependent churches or chapels. Originally, five chapels or simple benefices were counted in the town of Gallinaro, each having its own clergy; and, without contradiction, it was the Archpriest who exercised jurisdiction or primacy and precedence over these.

[*Latin ed. p. 155*]

SORANA 155, Archpriest. With the passage of time, special Rectors were no longer designated for these benefices or chapels; but another benefice called S. Salvatoris was added to the Archpriestal benefice in the year 1559; and two other benefices, namely S. Gerardi and S. Mariae, were added above the parish in the year 1667, to the abbatial benefice; and the rest were added to other churches in the surrounding towns. From that time, the Abbot of S. Leonardi states, the Archpriest's jurisdiction and rights of precedence over the clergy of the town were established, since they were no longer constituted as Rectors of the filial churches. Of the two chapels or benefices which the Abbot of S. Leonardi obtained, the most outstanding by far has always been the benefice and chapel of S. Gerardi, where the mortal remains of the saint are kept. Indeed, not only the inhabitants of the town of Gallinaro, but also people from the surrounding areas, venerate the saint Gerard with great devotion, and often come to him in large numbers, bringing offerings and various gifts. This gave rise to another occasion for dispute; for the Archpriest began to claim a portion of the offerings, or the administration thereof, and also contended that the full and perpetual right

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to the benefice of S. Gerardi had not been granted to the Parish Priest of S. Leonardi. These questions, which have been more vigorously raised in recent years, were brought before the Episcopal Curia; and the first task was to examine ancient documents which would demonstrate the status and legal relations of the churches in dispute. Consequently, a certain decree of the Bishop Giovanelli was brought to light from the archives, which, on the occasion of the Visitation of 1610, ordered that the care and office of administrator of the sanctuary of S. Gerardi should not belong immediately to the Archpriest or the Parish Priest, but immediately to the Bishop; who was to appoint a priest, at his discretion, to this office. This decree, once made public, was not accepted by either the Archpriest or the Abbot, and they appealed to the S. O. C. [Sacra Congregatio] to protect their rights, which they believed were being undermined by this decree.

[*Latin ed. p. 156*]

156 FROM THE HOLY GENERAL COUNCIL: It is true that nothing certain was presented against the decree of Bishop Giovanelli, and the rescript was issued on July 10, 1897: The decrees of the Holy Visitation are to be observed. When the disputes were becoming more heated, the Bishop, on the occasion of the Holy Visitation, issued a decree on September 10, 1897, in order to resolve three prior questions that were greatly agitating minds. And concerning the first question, he established: I. That the direction of the Church of Saint Gerard, with its attached endowments, must belong to the Abbot for the time being, by virtue of the bull of union granted by Clement IX on January 11, 1667, which was subsequently recognized by the Ordinaries. II. That the precedence of honor must belong to the Archpriest for the time being: that is to say, it pertains to him to celebrate Mass on solemn days in the church shared by two parishes, except on the fifth day of the greater week, on Holy Saturday, on the day of Easter, and on the Saturday before Pentecost; on these days, the functions will be performed on a yearly rotation; etc., and that it pertains to him to regulate the sacred functions that are not parochial, pertaining to the Abbot; with all other rights to be observed as they are due. III. That the administration of the offerings for Masses, and for other prayers, must remain with the Ordinary; who will fulfill this duty through a delegated person. The Archpriest acquiesced in the episcopal decree, but the Abbot opposed it concerning the second and third points, by filing an appeal with the Holy Congregation. The Abbot, through his appointed procurator, presented the following summary argument. First of all, the advocate pointed out that the decree had been issued while the matter was already before the Holy Congregation, therefore it was not lawful for the Bishop to decide anything of his own authority. Then he proceeded to the merits of the case, but began with the third point, namely, the right to administer the faithful's offerings, which right, he asserts unjustly, the Bishop claims for himself.

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DEFENSE OF THE ABBOT.

[*Latin ed. p. 157*]

SORANA 157. He observed that when the piety of the faithful first resulted in generous offerings, the question arose as to whom these gifts, which were brought to the churches in great abundance, should be given. The response was that they should be given to the parish priest, either to the parish church itself, or to other churches and chapels within the parish boundaries. Nor should they be given to shrines that the faithful had built in their homes, or even to images of the Blessed Virgin, which are often displayed on walls. "For the parish priest is the mediator and link between God and the people, and just as it pertains to him to administer divine teachings and sacraments to the people, so too, in return, those things that belong to the people, namely, prayers, sacrifices, and offerings that the people offer to God, belong to the parish priest." (Pirhing, *Ius. Eccl.* I. 3, tit. 30, sect. 7, n. 179. V. cap. *Pastoralis*, 9, de his quae fiunt, lib. 3, tit. 10, *Decret*.). On this matter, after having discussed parish priests, the compilers of the *Decretals* (lib. 3, tit. 29) immediately proceeded to treat of tithes, first fruits, and offerings (lib. 3, tit. 30). This is explained by Reiffenstuel as follows: "All and each offerings, which are made within the boundaries of a parish, by common law belong to the local parish priest, so that he has a legally established intention for himself, whether they are offered within the parish church itself, or outside of it, e.g., in a chapel or in a private shrine, or to a devout or miraculous image, even if depicted in the home of a layperson, or elsewhere, within the boundaries of the parish, unless otherwise established by legitimate local custom, or unless it is otherwise clear from the intention and will of the giver." (*ius. can. univ.* ad tit. de dec, prim. et oblat., art. 9, § 190, vol. 3, p. 457). Fagnanus states: "The parish church has a legally established intention regarding all spiritual revenues within its boundaries. From this, I infer the question of whether offerings made to the image of a saint depicted on a wall outside the parish church, but within the parish boundaries, are due to the parish priest, or not... Therefore, let this be the conclusion. Offerings made to the image of the Most Blessed Virgin, or of another saint, depicted or affixed on a wall..."

[*Latin ed. p. 158*]

138 From a certain private council of learned men, it is held that offerings made to a sacred image, which are within the boundaries of a parish church, belong to that parish church; and this holds true even if the offerings are made at the altar in a chapel within another church. For, nevertheless, they are due to the parish church, within whose boundaries that church is situated" (commentary on Decree 9, Pastoralis, concerning those things which are done, paragraphs 13, 14, 16, and 25). And finally, Augus-

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tine Barbosa teaches this: "The truer and more widely accepted opinion is that, whether the sacred images are located within the parish church or outside, but still within the boundaries of the parish, the pastor has a rightful claim over all offerings made within those boundaries and pertaining to him." (De officio et potestate Parochi de oblationibus, chapter 24, paragraph 29). "Offerings made within the parish belong to the pastor; and those made to a chapel or to an image located within the boundaries of the parish belong to the priest in charge or to the pastor of that parish." The author continues, stating that not only do these men teach this rule, but they interpret it in such a way that, if there is any doubt, they favor the pastor. It can happen that within a chapel there is a minister (commonly a chaplain) who performs sacred duties, and who claims that the gifts given by the faithful are due to him. But the answer is that the rights of the pastor must be protected, and that these gifts are due to the pastor, not to the minister of the chapel. "Offerings made in a chapel or oratory located within the boundaries of a parish belong to the parish church or to the pastor, and not to the chapel or to the chaplain" (Pirhing, Ius Eccl., I, 3, title 30, section 7, § 179). Similarly, if sacred images are venerated in a cathedral church, and the bishop receives a stipend as if it were his own church, "the same conclusion applies even to offerings made to the sacred image located in the cathedral church, because they are not intended for the bishop, but for the archpriest who exercises pastoral care there" (Fagnanus, loc. cit., paragraph 26). Nor is it otherwise if a priest is provided for by the people through their offerings: "It is extended so that it also applies if offerings are made during Mass to the priest celebrating: for they do not belong to the priest, but to the rector of the church" (that is, the pastor) (Fagnanus, ibid., paragraph 27).

[*Latin ed. p. 159*]

SOR AN A 159. One and the other response was given to the Holy Rota. In the first case, a Bishop was restrained who was abusing his authority; and the Chapter, which had the care of souls, was prevented from appropriating these offerings. For it was considered then that only the offerings made to the sacred minister were to be taken, when, which is rare, no chapel was located within the boundaries of any parish in Fismes. "The Lords responded in favor of the Chapter, to which the common law favors it, because the canons are the pastors, and it is the more true and accepted opinion that whether such sacred images are placed in the parish church or outside, but within the limits of the parish, they belong to the Parish Priest. Only to the Bishop are the offerings due when the sacred images are found outside of any parish." (Holy Rota in Lünen, Sarzanen, concerning offerings before Merlin, on Monday, February 8, 1627, vol. 1, p. 5, sections 1 to 4). In the second response, a judgment was given concerning the offerings brought to a church that was not a parish church. It was decided that the

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offerings should be assigned to the Parish Priest. "Since the Lords had decided on May 24, 1610, to erect a church under the invocation of the Blessed Mary at the Crib within the boundaries of the ancient and baptismal place of Paganica, and that the separation of a part of the care of souls of the same was not to be, a further, not insignificant doubt arose, as to which the erected church and its offerings belonged. After omitting the discussion about the church, I proposed the doubt strictly concerning the offerings. And it was said that they belonged to the parish church of the aforementioned place of Paganica, because the offerings are of the parish right." (Rota before Pirovano in Aquilan, concerning the nullity of the erection, on Monday, December 20, 1610, 255, p. 1, etc.). The advocate also noted that special intentions of the offerers do not matter; for this is a matter that belongs to the Parish Priest, so that he may administer the offerings, and faithfully provide for the expenses that the donors have provided. Nor does the Bishop have the right except to demand and examine the rendering of accounts, according to the mind of the Council of Trent. "But if, according to the intention of those offering, the offerings are not to be given to the Parish Priest, but to the church or some other end..."

[*Latin ed. p. 160*]

160 E X S - G - CONCILII pertineant: The parish priest, however, has the administration of these [offerings], not so that he may appropriate them to himself, but so that he may apply them to the proper end" (Reiffenstuel, cited above, § 194). "And although this conclusion finds its place, unless the offerings have been destined for a specific purpose by the will of those who offer them piously: in which case they pertain only to the parish priest; and whenever they are given by the faithful for a specific purpose, such as for masses or the church building, then they in no way pertain to the parish priest, and the will of those who gave the alms or offering must be precisely observed. However, it must be noted that the parish priest does not have a valid reason to convert these offerings to his own use in this case, but the administration of the offerings still pertains to the parish priest, even in this case, according to the same law of parochiality; and just as the offerings pertain to the parish priest, unless they have been given for a specific purpose, so much more does the administration of the offerings pertain to the same parish priest, whenever they are to be used for a specific cause" (Barbosa, cited above, § 30). "If offerings are made for the sake of a chapel or for a specific purpose... they must be converted to the intended purpose according to the will of those who offer them... nevertheless, it is always true that their administration pertains to the parish priest, as the spouse of the Church, who is bound to convert them only to the benefit desired by those who offer them... In these matters, the Bishop has no right except in jurisdictional matters of review" (Cardinal Petra in the constitution of Anastasius IV, section 2, § 19). "For the administration of the offerings,

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which flowed continuously from the piety of the faithful to the image of the Blessed Virgin of Gratiarum, located on a certain wall outside one of the gates of the Città Ducale, for the purpose of completing the church building that had already been begun, the Bishop had, for two years and more, appointed four individuals... But the chapter of the Cathedral Church, within whose parish boundaries the aforementioned image is located, claimed that the administration in question belonged solely to itself, and both sides appealed to the S. C. C. The question was therefore proposed: Whether the administration of the offerings made to the image of the Blessed Virgin of Gratiarum..."

[*Latin ed. p. 161*]

Concerning the matter of the image at Gracias, it pertains to the Chapter of the Cathedral Church, or rather, to the Bishop, or to those delegated by him, and to whom or to whom should the maintenance be given? The Sacred Congregation responded: "It pertains to the Parish Priest, within whose parish the image exists, under the direction and supervision of the Bishop." (Sacred Congregation, in Città Ducale, on March 22, 1699, book 48, decree, cited by Pallottini, words "oblat"). The defender, seeking to refute the arguments presented by the Bishop, notes that the argument is flawed; namely, that the shrine dedicated to Saint Gerard should be considered among the major sanctuaries, in which the administration of donations, which are often considerable, is demanded of the Bishop, not of the Parish Priest. To support this, the Bishop cites Cardinal De Luca, whom he believes held the same opinion (Miscellanea, discourse 35, §7). However, the defender argues that Cardinal De Luca had a different intention, and that the profit derived from these donations in major sanctuaries cannot be appropriated by the Parish Priest. It is clear that the faithful have brought these donations, not to enrich the Parish Priest, but to adorn the Church, and that this intention must be respected. "The rule favors the Parish Priest rather than the Bishop with regard to offerings. However, it allows for certain limitations, especially two: First, when it is expressly, or even implicitly and conjecturally, established that the intention of those making the offerings and alms is that they should be applied to the Church itself or to certain uses, and not that the priest should enrich himself, and convert them to private uses and private benefit; in which case, that intention must undoubtedly be observed, and it should prevail over any other legal disposition. Secondly, in the same way, in ambiguous cases, when the quality or quantity of the offerings themselves seem to indicate the same true intention, because the offerings and alms may be large, or even small, but nevertheless, due to their frequent occurrence, they may be considered large, and may seem to indicate the true intention of the donors that they should be used for the construction or ornamentation, or for the endowment of that chapel of the Church." (Cardinal De Luca, Theatrum Veritatis et Justitiae, Volume XXXII,

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page CCCLXXV, 11).

[*Latin ed. p. 162*]

162 FROM THE HOLY GENERAL COUNCIL concerning tithes, I, XIV, p. 3, section 6, paragraphs 9 and 10. At the outset, a question arises, and De Luca believes it should be investigated whether the offering pertains to the sanctuary itself: for otherwise, even if the gifts are substantial, they belong to the Parish Priest. "Therefore, I maintain that, for a proper decision, it seems necessary to proceed with a distinction, namely, whether it concerns an image newly discovered, or even an ancient one to which the people flock with alms and offerings due to certain circumstances, or true or supposed miracles. And in such cases, whatever they may be, they must fall under the aforementioned limitations, since the latter seems to implicitly contain the former: indeed, it is quite probable that the people, in seeking graces received or hoped for, resort to that image with alms and offerings, intending to give to the image itself, and frequently so that a magnificent church may be built, endowed, and adorned, and not to give to the Parish Priest or Bishop, or another Prelate, for private benefit... Or, truly, it concerns ancient churches or images to which the people are accustomed to flock each year or at certain times, out of devotion or custom, with offerings and alms... as is the case with the offerings in the Church of Saint Mary of the Angels in Kosso, on the day of the Porziuncola... and in such cases, these offerings and alms belong to the Parish Priest or Rector, as fruits." (ibid., paragraphs 11 and 13). However, the speaker notes that, even if it concerns a sanctuary, and gifts that do not belong to the Parish Priest, the Reverend Doctor acknowledges that the Parish Priest is left with the faculty to administer them. "In the first case, the question arises regarding administration, and in this matter, the rule that assists the Parish Priest is that, when it is certain that the situation is within the limits of the parish" (ibid., paragraph 12). But if, as the speaker alleges the Bishop claims (Ecclesiastical Miscellanea, p. 4, section 35), there is a controversy, Cardinal De Luca responds in a different way, because a long-standing custom of the Parish Priest was being challenged. "Given the observance of many centuries concerning the custody and veneration of the Holy Cross, or the illustrious image of the face of our Lord Jesus Christ in Lucca, the administration would have..."

[*Latin ed. p. 163*]

SORANA 163, under the authority of several secular governors, who are commonly called "officials," are accustomed to be appointed by the Republic or another secular authority, with the sole approval or confirmation of the Bishop" (ibid., § 1). Therefore, the lawyer argues, what the Bishop objects to does not apply to the church of Saint Gerard, as it is very different from sanctuaries. He considers it comparable to the small

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chapels that De Luca mentions: where, for a long time, not only the parish priest administers, but also profits "from ancient churches or images, to which the people are accustomed to come each year or at certain times, with offerings and alms." If, the lawyer insists, the chapel of Saint Gerard is to be equated with sanctuaries, then the administration should be granted to the Abbot, not the Bishop, according to the law, so that it may be used for the benefit of the Church; for "regarding administration, the prevailing and more accepted opinion is that it belongs to the parish priest" (De Luca, loc. cit.). Then, the lawyer proceeds to refute another objection drawn from the decree of Bishop Ioannellius. He recalls that this decree contains three points: I. That the administration of offerings belongs either to the archpriest or to the Abbot, at the discretion of the Bishop. II. That the administrator must render an account of his administration to the Bishop. III. That the offerings must be used for the benefit of the Church. The lawyer states that the second and third points do not contradict him. As for the first, he explains that at that time, the chapel of Saint Gerard was a simple benefice, which had not yet been attached to the Abbot. Therefore, the Bishop could have adopted the opinion of those who hold that the administration of offerings does not belong to the simple rector of the church, but to the parish priest; and all the more so because, previously, several inconveniences had occurred, which the Bishop testifies that he wished to remedy. And since there were two parish priests in the town, without any division of territory, but only of families, he could grant the administration to one or the other at different times. But today, things are very different, since the benefice of Saint Gerard is now part of the Abbots benefice.

[*Latin ed. p. 164*]

164 From the decree of the Council, it is added. This, indeed, necessarily follows, so that the decree of Bishop Ioannellius cannot be maintained today: for the case arises from a situation that could not have begun in this way. Regarding the third objection, the advocate briefly defends himself, stating that the Bishop contends that there were just causes for the removal of the administrator. For he contends that these causes were not just. Only one cause can deprive a parish priest of the administration of offerings: namely, if he is unfaithful in administering them. But the Bishop did not remove the Abbot from the administration because he was proven to be unfaithful, but because 1) his predecessor is said to have converted the offerings to his own profit; 2) because the current Abbot does not render accounts of the administration, or does not render them in the proper form; 3) because two parish priests are arguing with each other. But first, says the advocate, this cannot be proven. But even if it were proven, it is not just to punish the successor for the fault of the predecessor, who was not in fault. Regarding the second point, the advocate notes that the Abbot has rendered accounts whenever the Bishop has requested them. And if he has not

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rendered them in the proper form, he is prepared to comply with the form that the Bishop indicates in the future. But the third reason does not compel the removal of the administrator, but only serves to restrain the parish priest, to whom the administration does not belong, from interfering in the office, so that he may not disturb others. The advocate then notes that the long-standing and memorable possession of the Abbot supports him, from which a new title, as far as the administration of offerings is concerned, is conferred upon him. Regarding the second part of the argument, in which the advocate seeks to refute the preeminence of the Archpriest, he first draws his argument from the memorable custom, which, according to the opinion of all authors, is the strongest proof with regard to preeminences: "Long-standing custom must be given great consideration in all matters," and even more so and particularly in this matter of precedence, in which custom does everything, being called the regulator of all things (De Luca, *de res. disc.* 19, n. 7). The fact of the custom is confirmed by the testimony of the elders of the place, from which it is clear that the Abbot has been given precedence by the Archpriest.

[*Latin ed. p. 165*]

Sister Anna had always been independent, so that each had equal rights, and all the sacred rites were celebrated alternately each week in the common church. And indeed, some of the townspeople, at the insistence of the Archpriest, testified to this: one presents this testimony, which contradicts what was said before and adds to the testimony of the others. The testimony of the townspeople is confirmed by the lawyer with several documents: and especially with two reports, which were sent to the Curia of Sorana in the years 1703 and 1803. And in both, and especially in the first, which is also signed by the Archpriest, it is mentioned that, according to this custom, the sacred rites were celebrated each week, even on more solemn days. "In the receiving church, the candles and palms are blessed each week by the curates... on Holy Saturday and on Pentecost, the baptismal font is blessed, as mentioned above. In the receiving church of St. John, the solemn Masses are sung on all movable feasts each week, according to the decree of Monsignor Piccardie." From these last words, the lawyer draws another argument to support the custom: because the Bishop Piccardi solemnly confirmed it by decree. However, a copy of this decree was requested from the Curia of Sorana, but it replied that it could not be found in its archives. Finally, anticipating another objection raised by the lawyer, based on the honorary rights that the Archpriest formerly possessed, he replies that these rights were abolished today, both by an ancient custom and by the decree of Bishop Piccardi. He says that this is clearly evident if one considers the origin of these rights. Whether they were based on a sufficiently broad jurisdiction that the old discipline granted to the Archpriest, or on the existence of a receiving clergy, of which the Archpriest was considered the head. But the

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jurisdiction of the Archpriest has long since declined, and there is no longer any trace of a receiving clergy.

DEFENSE OF THE BISHOP.

Furthermore, the Bishop, when questioned about his opinion regarding the appeal raised by the Abbot, recounted in detail, through a lengthy investigation, a disgraceful affair...

[*Latin ed. p. 166*]

166 It has been reported from the Council of Trent that in Lucca, the Abbot stirred up the people against the promulgation of the decree, secretly inciting them against its promoter. However, the Ordinary defended the justice of the decree, since it harmed no one's rights. Regarding the third part of the decree, which is the most important in this case, the author cites the authority of Cardinal De Luca Misceli, *Disputationes*, 35, n. 7: "After the relaxed mandate concerning the maintenance of vestments, there arose a discussion concerning the petition, and the proposed doubt, regarding to whom the administration of the offerings should belong, which are offered to the Image of the Most Holy Cross by the faithful, who contribute there for the sake of religion. Whether, that is, they are due to the Bishop, or to the Chapter. The Doctors answered in favor of the Chapter, which is favored by the common disposition of the law, and by the custom of that Church, and by a particular agreement entered into between the parties. 'Indeed,' I say, 'by common law, because the Canons are the Parishes, and they exercise the care of souls, and although there has been a controversy among the Doctors, as to whether the offerings which are brought to the sacred Images are due to the Bishop, or to the Parish Priest, and many parts of the Bishops defend this, as Angel does, in the *Disputationes Incipiens in refulgenti*, in the second doubt, Maluet, *de oblatio*, in 4, doubt n. 14, and Peter of Ubaldo, *de Canon. port.*, chapter 4, question 16, and Decian reports, *consilia*, 6, under n. 7, line 2. However, the more true, and today most accepted opinion, is that whether such sacred Images are placed in a Parish Church, or outside, but within the limits of the Parish, the Parish Priest has a well-founded intention concerning all offerings occurring within the limits of his Parish, and they belong to him; and this is urged by the text in chapter *Pastoralis*, and there the Canonists speak of those things which are done by the Prelate without the consent of the Chapter, and the text in chapter *Hanc 10*, question 1, and in chapter *Dilectus, de Offic, ordin*, where Abbot, n. 4, adds a version, according to which, only to the Bishop are the offerings due, when the sacred Images are found outside of every Parish, Felin, *ibidem* in principle, and n. 3, and Abbot, in chapter *Quoniam, n. 1 de decim.*, where he clearly states that they belong to the Parish Priest, and not to the Bishop. Capel, *Tolos*, decree 483; Ferret, *consilia*, 143, who

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makes a good distinction, n. 2, 3, 4."

[*Latin ed. p. 167*]

SORANA 167 Azor. *Institutiones morales*, part I, chapter I, section 7, paragraph 38, question 13; They say that he who generously contributes for the parish priest against the bishop in those offerings which are presented to the Most Holy Crucifix, consulted the council of 16, in total I. 2; Guttier, *Canon*, question I, 2, chapter 21, number 162; Modern, Bononian, variant resolutions, I. 2, chapter 42, numbers 6, 7, and 8; Rice, decrees of Naples, 170, number 7, part 4, and it seems that St. Thomas embraces the same opinion in 22, question 86, article 3, especially in the response to the second argument, and it is expressly followed by the *Rota* in Aquilana, concerning nullities in the erection of [something], on December 20, 1610, before the Most Reverend Father Piro, which is decree 256, part 1, recent, and in Beneventana, concerning spoliations, on December 2, 1585, and December 2, 1587, before Orano, where it was said that the offerings made in the cathedral church pertain not to the bishop, but to the archpriest, who exercised the care of souls there, and there the Most Holy Congregation of Illustrious Interpreters of the Council of Trent responded in one case. For the parish priest has universal jurisdiction within the limits of his parish, and he is a mediator between God and the people; therefore, just as he presents to the people the dogmas and sacraments that come from God, so, conversely, he presents to God what is from the people, namely, prayers and offerings, and those who serve at the altar participate in the altar, as is excellently reasoned by St. Thomas in the aforementioned article 2. "And although this conclusion establishes its place, unless the offerings have been destined for a specific purpose by the will of those who offer them piously, in which case they pertain only to the parish priest; but whenever they are given by the faithful for a specific purpose, as in our case for Masses and the building, then in no way do they pertain to the parish priest, and the will of those who gave the alms or offerings must be precisely observed, as the aforementioned Doctors point out, and especially Addent, in the decrees of Tholos, decree 485; Modern, Bononian, in the aforementioned chapter 42, number 1, I. 2; Rice, in the aforementioned 170, number 1, and the *Rota* in Bracharen, concerning oblations, on December 17, 1612, before the Most Reverend Patriarch Panphilio. "However, it must be noted that...

[*Latin ed. p. 168*]

168. From the decree of the Holy General Council, the parish priest, in order to effect this, may convert the offerings to his own use, provided that they are to be distributed for the use intended by those who make them. However, even in this case, the administration of these offerings seems to pertain to the parish priest, according to the same law of parochial rights, especially since the offerings belong to the parish priest unless they have

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been given for a specific purpose. Indeed, all the more does the administration of these offerings pertain to the same parish priest whenever they are to be distributed for a specific purpose, since, regularly, the parish priest must be a faithful administrator and dispenser of these offerings, partly converting them to his own use, partly distributing them for those things that concern the divine worship, and partly to alleviate the poverty of the poor, as has been established in the same way by St. Thomas in the passage cited above, and in Canon 12 of the Council of Vulturnum, and in Canons 2, qu. 2. The Abbot stated in chapter 2 of *Postulastis*, verse 2, that only the parish priest has the administration of such offerings. Furthermore, concerning those things that are done by the Prelate without the consent of the Chapter, see *d. cons.* 143, n. 4, verse 2, "And that." Consequently, although the canons may not convert these offerings to their own use, they should not, for that reason, be excluded from the right to administer them, which belongs to them by virtue of parochial rights. "The canons are also supported by the privilege of Nicholas V, and also by custom, which has always seen them exercise this administration of offerings." All agree that custom should be given great weight in this matter, as stated by Marian. Socin. in *De Oblationibus*, book 18, numbers 17, 18, 26; Maluet in the same treatise, part 4, number 62; Ferret, *Conf.* 258; Decian, *d. cons.* 16, number 1; Rice, *dicta dec.* 170, number 2; and Modern Roman, *Disceptationes*, book 395, number 25, and the theologians admit this, as stated by Sot. in *De Justitia et Jure*, book 2, question 3, article 2, verse 2, "Whatever." Finally, much weight was given to the agreement reached between the canons of Cattana and the canons, which was confirmed by the presence and decree of the Bishop, and in which it was expressly agreed that the offerings made to the Most Holy Crucifix.

[*Latin ed. p. 169*]

SORANA 169: Two canons are to be elected each year to administer [this], with the obligation to render an account to the Chapter at the end of the year, in the presence of the Bishop. Therefore, although this administration is, by right, subject to the Bishop, it can nevertheless be entrusted by him to the canons, even in cases of doubt, as Felin stated in chapter "Dilectus in princ," verse. This is supported by *J.J.ec. cons.* 148, n. 3; *Ferret, cons.* 278, and the *Rota* followed this in the *Toletana Eleemosynarum* of May 24, 1619, concerning "R. P. D. meo Pirovano," *Rice, dec.* 101, n. 2, III *prax.*, and *Neapol. Cur. Episc.* 170, part. 4. And although Rebuffini disagrees with the opinion of Decius, because he considers it improper that laymen should interfere with these sacred offerings, which are of the Sanctuary of God, nevertheless, this is not improper in the case of canons, and those who administer the Sacraments to the people. And the opinion of Rebuffini was rejected by the *Rota*, whenever a layperson does not convert the aforementioned offerings to his

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own use, and *Rice, dicta dec.* 170, n. 11 and 12. "Nor does it matter that the Bishop was present at the transaction, and intervened with a decree to settle disputes arising between the Chapter and those from Catania, and therefore did not prejudice himself in any way, so that he may not have administration over these offerings, according to the teaching of Castrensis in *1. Cuius, n.* 1 ff. concerning pledges, acts, and *cons.* 423, col. 2, I. 1, where it is stated that if someone, as a governor, intervenes with a decree, it is not prohibited for him, as a *privata* person, to challenge that act, and the same applies to a Notary, a Tutor, and another who, by reason of his office, gives his consent. The Doctors note in *1. Cum quaedam, C. de administ. Tutor.* Bart, in *1. Sicut, § Non videtur, ff. quib. mod. pign. vel hypoth. solvitur*; Cephal, *cons.* 148, n. 23; Menoch, *cons.* 58, n. 7, and extensively Surd, *dec.* 153, n. 17, and *cons.* 365, n. 21 and following. For this theoretical principle is true whenever someone represents a double person, and therefore, it does not prevent someone acting as a *privata* person, from having also acted as a public person, and the aforementioned Doctors speak in these terms, as well noted by Zuccharia in *1. 1, n.* 110 and 119 of the Code of Pacts. Surd, in his *dicta dec.*, and when this was done to which he could be compelled.

[*Latin ed. p. 170*]

170. FROM THE DECREES OF THE COUNCIL. It is true that this does not apply to our case, because the Bishop, and what he did in the transaction, and what he is now doing in this judgment, is always considered as the same Bishop, and not as a different person; nor does it appear that, with regard to that decree, he could have been compelled by his office. Therefore, all difficulty ceases, because even if the transaction is considered, nevertheless, no right belonged to the Bishop in these offerings, or in their administration, but this belonged to the Chapter, with the right, and acting as the substitute for the Parish Priest, as stated above, and therefore, it does not seem that the transaction has introduced any new prejudice against the Bishop. "Furthermore, although the Bishop is regularly the executor of pious wills, the right of the Bishop is general, while the right of the Parish Priest, whom the Chapter represents, is special, and therefore this prevails, as is well stated by Decian, in the decree of the Council, 16, n. 17 and following, and n. 21, verse. It does not obstruct. And since it is permissible for him to be an executor, it does not prevent him from being able to entrust this ministry to another, nor has he entirely relinquished it, because the Canons are obligated to give an account of the administration to the Chapter each year, in the presence of the same Bishop, as is stated in the transaction, and therefore the Bishop will be able to oversee that the wills of those who made the offerings are not defrauded, and that those offerings are provided for Masses, and for the fabric [of the church], etc." Furthermore, in considering the merits of the case, the following should

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be noted. Because the Abbot believes that the decree of the Holy Visitation, issued by Bishop Giovanelli in the year 1610, can no longer be applied after the union made in the year 1667 of the benefice and the chapel of Saint Gerard with the parochial benefice, it should be noted that these two things do not conflict with each other; namely, that the benefice and the chapel have been added to the Parish Priest in rights, but not also to him in the administration of the extraordinary and uncertain offerings of the faithful. Indeed, it has been established that alms, since they are uncertain and depend on the free generosity of the faithful, are not to be included among the parochial rights, as the Holy Rota stated in the decree 27, n. 12, after Antonium de iur. et oner. clerici apud Pal-.

[*Latin ed. p. 171*]

SORANA 171 lottini, vol. 14, cap. Oblationes, n. 15. Indeed, if alms are presumed to be given with the intention of benefiting the place where the sacred Relic or Image is displayed, consult Pignatelli, 160, n. 1, ad 4, concerning aqueducts. Regarding the functions of the day of December 18, 1773. It is believed that the Sacred Congregation had already declared that the offerings made in the Oratory of the Blessed Virgin Mary should be distributed for pious purposes, for the benefit of the same Oratory and Image, at the discretion and conscience of the Bishop, in Lucania on July 9, 1644, in book 17, decrees, page 7.41; it judged similarly in Canonici Oblationum, on February 11, 1662, as cited by Pallottini. Therefore, as has already been stated, the parish priest ought to convert these revenues to pious uses for the benefit of those who offer them, and to allocate these revenues appropriately. However, it does not impede that the right to administer does not pertain to the parish priest, as, for example, when a Rector is established in a chapel or filial church; then the administration belongs to this Rector or chaplain, as the most learned of jurists demonstrate. Indeed, the Decree of Bishop Giovanelli, already issued since the year 1610, established that the Bishop, for the time being, is the administrator of these offerings; and since this decree, although it is not certain that it was legitimately obtained, has been enforced by custom and long-standing observance for fifty years, since the union of the benefice of St. Gerard with the parish benefice, it is clear that the Bishop's right to administer these alms has been legitimately established. Nor should this be dissolved by the subsequent union; therefore, the right of the Abbot in the benefice of St. Gerard is conveniently reconciled with the Episcopal rights, since they pertain to a different object. The perpetual disputes between the Abbot and the Archpriest demonstrate that the Abbot has never peacefully exercised the right to administer. Moreover, the court perhaps, in choosing its delegate as administrator, has granted the mandate alternately to one and then to the other; just as the Episcopal decree today prescribes. Without a doubt, the Bishop could in no way and under no circumstances follow the custom of

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the Abbot, who, in rendering the admi-

[*Latin ed. p. 172*]

472 From the perspective of the administration of the Sacred Congregation, no other report should be given to the Bishop than the one submitted in the year 1897. Indeed, a precise accounting of all revenues is most urgently required, given the subject matter, because the greater part of the alms is destined for the celebration of Masses. Furthermore, the Episcopal office seems unable to tolerate such a large number of Masses being left to the discretion of the Abbot, for a fitting and appropriate celebration. Therefore, the Sacred Congregation has always devoted special attention to ensuring the diligent application of Masses. Indeed, with special authority delegated to it by Urban VIII, the Sacred Congregation established certain decrees concerning the celebration of Masses, which were renewed by Innocent XII. The intention of these decrees is primarily that Masses be celebrated, even without undue delay after their reception, in the case of votive Masses; and that in all foundations for Masses, care be taken by whatever means to ensure that the pious intentions of the faithful are religiously fulfilled. To this matter, Benedict XIV refers in *De Synodis Dioecesibus*, book 12, chapter 7, paragraph 5: "A similar question has often been presented to the Sacred Congregation, in which it was asked what should be done when a large sum of alms is given to a church, so that so many Masses may be celebrated in one particular and designated chapel of the same church, as many as could not be celebrated there. And the Sacred Congregation decided that the celebration of Masses should not be postponed beyond one week, but should be carried out in other chapels of the same church. In order, however, that no burden be imposed on those who offer alms, it ordered that a prescribed notice be displayed in a visible place in the church, so that those who contribute to the expenses of Masses would be assured that their offerings would be fulfilled at the altar designated by the benefactor; if, however, it could be done within the space of one week, otherwise in other altars of the same church, according to the decree of the Sacred Congregation." Therefore, the Bishop must constantly be informed of the number of Masses received and the manner of fulfillment. Those Masses which cannot be celebrated in the church to which they are offered, certainly must come to the hands of the Bishop, since only he can ensure that the obligations of the Masses are fulfilled as quickly and faithfully as possible.

[*Latin ed. p. 173*]

Therefore, the Decree of Bishop Giovanetti, concerning the administration of ecclesiastical alms, primarily pertains to ensuring a faithful and diligent celebration of the Mass. Another point of the matter, it is best to add nothing further. However, this precedent of honor is scarcely, or perhaps

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not at all, contested by the Abbot, since, having seen the published decree, he appears not to contradict it in this regard. Furthermore, the Archpriest G-entilucci, through his appointed Procurator, will present his rights more extensively in a booklet that will be circulated after the distribution of the *folii*. In the meantime, it is worth noting that, from the intention of the title concerning majority and obedience, the very name of Archpriest sufficiently proclaims rights of precedence, at least in terms of honor; which, of course, cannot be denied, unless a clearly contrary and legitimate custom is proven. Moreover, from history, rights of precedence are claimed by the Archpriest; for he certainly exercised precedence and jurisdiction over the Rectors even before the union of the simple benefices. If, after the union, the Archpriest lost the exercise of jurisdiction, it does not necessarily follow that he also lost precedence, since the one can exist without the other. With these considerations, the purpose was to resolve the doubt concerning whether the Episcopal Decree is valid regarding the second and third points in this case.

RESOLUTION. The Sacred Congregation, after deliberation on April 29, 1899, decided to respond: Regarding the second point, affirmatively; regarding the third point, it was postponed and deferred to further consideration.

[*Latin ed. p. 174*]

174 FROM THE MOST HOLY COUNCIL OF SAVONE. CONCERNING ECCLESIASTICAL BENEFICES. June 17, 1899. Session 21, chapter 3. Concerning restitution. A SUMMARY OF THE CASE: John Baptist Ricci, a priest of the Diocese of Savone, having obtained, by the right of passive patronage, a certain ecclesiastical benefice from his brother, Sebastian Ricci, who held the right of active patronage, while he was not yet invested with the sacred orders, and having, by the same act of institution, or instrument, obtained the faculty to establish this benefice as a sacred endowment, namely, for the purpose of receiving the sacred orders, as was indeed done. This benefice had been founded by Sebastian Folco, the maternal grandfather of the Ricci brothers, through testamentary dispositions on October 7, 1853, with the obligation of certain Masses, and with the passive patronage reserved for his sons and descendants from his two married sisters, one being married to Matthew Ricci, and the other to Charles Folco; while the active patronage was reserved for his nephew, Sebastian Ricci, and his descendants; and in the absence of these, for another nephew, Charles Ricci, and his descendants. Truly, the revenues of the benefice were to be drawn from a certain fund of Folco, which the testator had designated for his nephew, Sebastian. Sebastian Ricci, as we have said, first exercised his right, granting the title of the benefice to his brother, John Baptist. Today, this Sebastian is the plaintiff against his brother; and this is the reason for the dispute. The priest, Ricci, having received the priestly

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order from 1859 to 1869, duly fulfilled the obligations of his benefice, but from 1870, when he moved his residence elsewhere, first to Janua, and then to Rome, where he still resides, he is said to have neglected to fulfill these obligations. Meanwhile, it is reported that the brother, Sebastian, frequently admonished the priest, John, to fulfill the obligations of the benefice; but without success; hence he was obliged to take care of the fulfillment of the obligations himself, paying the revenues of the benefice to other priests who celebrated Masses; but not...

[*Latin ed. p. 175*]

SAVONEN. In the year 175, [someone] urged his brother to fulfill his obligations. But this one, as if to alleviate his own troubles, brought his brother Sebastian to court in the year 1893, arguing that the matter should be settled according to the norms of civil law, by which the brothers Ricci had previously managed the redemption (commonly called emancipation) of the aforementioned Chapel, or the real burden attached to the Folconi estate, and the revenues derived from it, which were constituted as a principal sum, used for public loans or public bonds of foreign currency. Then Sebastian, in order to restrain the obstinacy of his priestly brother, and also threatening him with the penalty of removal from the Chapel, invoked the authority of the Curia, which formally notified the priest that he would be deprived of the Chapel unless he appropriately fulfilled his obligations within a specified time. But John replied that he had appealed to the Holy Congregation of the Council. In the meantime, the civil lawsuit was contested in the first and second instances; and in the first instance, the priest John, having been overwhelmed by the laws of ecclesiastical affairs, withdrew from the arena of judgment, but in the second instance, he obtained an unfavorable judgment, for the expenses of which he was condemned to reimburse his victorious brother in two-thirds. Because John refused to pay these amounts, and the delay in payment caused damage to the pious foundation, the revenues of which Sebastian had provided to cover the expenses of the civil lawsuit, he appealed to the Holy Congregation. It was written on August 23, 1897: "Let the priest John Baptist Ricci be reminded by his conscience, since he has litigated rashly, to bear the expenses that his brother had to incur in defending the case." However, when John did not heed these warnings and instructions, his pension, which was paid to him by the Dataria, was seized; and the lien on the seizure has not yet been lifted. Furthermore, Sebastian further petitioned the Holy Congregation to peremptorily admonish John the Chaplain, and to proceed to the sentence of removal, unless he was admonished to adopt better counsel.

[*Latin ed. p. 176*]

176 FROM THE HOLY GENERAL COUNCIL, it was determined. Then, the Sacred Congregation of the Council responded to Sebastian, the Orator,

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on March 7, 1898: "He may exercise his right before the Episcopal court, as and to the extent that it is lawful." Indeed, the Savona court rendered a judgment by which the priest Ricci was definitively removed from the office and the quality of chaplain of said chapel; so that it is permissible for the patron, Sebastian Ricci, to nominate another chaplain, and to settle all expenses, to be paid by the priest Ricci. Therefore, the present cause is limited to this initial question: whether the judgment of the ordinary judge of Savona should be confirmed or annulled in this case; and furthermore, Sebastian, the appellant, requested that he, as administrator and patron of the chapel, be compensated for any damage suffered; and thus, another doubt arises: "Whether there is a place for the making of damages in this case." SYNOPTIC DISCUSSION. DEFENSE OF THE PATRON. The advocate, who defends Sebastian, notes first that a principle of law is that a chaplain who neglects his obligations may be deprived of his office. All the more so, since the founding documents expressly caution against this. They consider that only under certain conditions can this removal be legally justified. And it is established that, both by the judgment of the Ordinary and by the discipline of the Sacred Congregation, especially in the Decree of Imola, November 17, 1641, chapter 41, three conditions are required: 1. That it be proven that the obligations have not been fulfilled. - 2. That it be proven that there was contumacy. - 3. That, finally, the judgment of ecclesiastical authority intervenes. Although the founding documents grant the patron the faculty of removing the chaplain, it is established by law, for the purpose of preventing inconveniences, that he should not exercise this faculty unless, through a legitimate judgment, a lawful cause for removal is manifestly demonstrated. But there is no doubt that these three conditions are present in this case. Regarding the first, the advocate observes that it is so well known that it certainly does not require demonstration, that the chaplain of Savona, since the year 1870, has completely neglected the obligations of the chapel.

[*Latin ed. p. 177*]

SAVONA. 177 se: and it is clear that this was fulfilled not otherwise than through the piety of the patron, who, administering the revenues, ensured that Masses were celebrated. - Indeed, since the patron himself does not deny this, it is manifest that the obligations of the chaplaincy were neglected. - Regarding the second point, the evidence of contumacy is provided not only by the letters of Sebastian, who insisted that the obligations be fulfilled, but especially by the judicial notifications, one of which was issued on November 13, 1893, a second on April 25, 1898, and the last on May 24 of the same year, which were personally delivered to the priest, John Baptist. - In these, it was expressly stated that, unless the chaplain, either personally or through another, fulfilled the obligations, and that, having disregarded this warning, he would be deprived of his office; thus,

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the chaplain, by not complying, demonstrated his contumacy. - Regarding the third point, the evidence shows that this condition was met, as the judgment of the Savona Tribunal testifies, which declared that the chaplain was removed from the chaplaincy, at the request of the patron. - With these points established, the advocate proceeds to refute the objections, which are reduced to three. First, it is objected that the first condition was lacking, because the patron fulfilled the obligations. - And since it is said that the patron fulfilled them, it is inferred that he fulfilled them through another. - Then, it is objected that the second condition was lacking, because the chaplain believed that the matter was being handled by the Sacred Congregation [Sacra Congregatio], and therefore did not respond to the Savona Tribunal, which he considered incompetent. - Finally, it is argued that the third condition was not properly fulfilled, because the judgment of the Savona Tribunal could not deprive the chaplain of his ordination, who had been entrusted with a sacred office. - The advocate considers these objections not difficult to refute. Regarding the first, the advocate states that a substitution, regarding the fulfillment of duties by another, although true, does not, in any way, suffice to avoid the obligation. For the regulations of the chaplaincy prescribe that, if he is unable to celebrate himself, he must arrange for the celebration of as many Masses as are imposed upon him, at his own expense. To fulfill this obligation, the chaplain must choose a substitute, and must pay him a stipend for the Masses celebrated. It is of no avail to note, *tota*, volume XXXII, page CCCLXXV, 12.

[*Latin ed. p. 178*]

178 FROM the Most Holy Council, it had been entrusted to the patron's discretion, so that he, according to his conscience, might take care to fulfill the obligations. For the patron denied having made any substitution or commission, because the priest confesses that for more than twenty years he knew nothing about the chaplaincy. Furthermore, the advocate infers from three denunciations that the priest had been negligent in fulfilling the obligations, either by himself or through others, to which he was legally urged to comply; and to which he did not deny being subjected, but rather attempted to delay and evade. But he should not have abandoned his defense, if he could have defended himself. Passing to the second objection, the advocate considers it so frivolous that it scarcely seems worthy of refutation. For he had not been denounced by the Most Holy Council, but by the Savona court, to celebrate the Masses; and because the decree "Let him use his right before the Episcopal Court" was mentioned in the denunciations, he certainly could not have been ignorant that the matter was being considered before the Episcopal Court. The advocate brings a similar judgment regarding the third objection: for the patrimony of Saint John the Baptist, in the income of the chaplaincy, was established by law so that the obligations should be diligently fulfilled, according to the tables; and

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that the chaplaincy should be released from this obligation without delay if he possessed other goods in the future. Therefore, the advocate says, the constitution of the holy patrimony did not deprive the patron of the right to remove the priest. Nor could it have done so, otherwise the priest could have neglected the obligations with impunity. But, this constitution, the patron notes, only demands that the priest be removed from the chaplaincy and that another be appointed to the patrimony with the help of the court. Which, of course, does not seem difficult to the advocate. For, besides his own property, the priest has received two pensions from the Pope: one of which, for a few years, is pledged for two hundred livres. The other is much larger, and is free from all obligations. Finally, he addresses the other doubt raised by the advocate, and notes that the Most Holy Congregation has already decreed that the damage that the chaplaincy had suffered through the civil controversy should be restored by the priest. And rightly so: for the priest's bad faith, after so many warnings, is clearly evident.

[*Latin ed. p. 179*]

SAVONEN. 179 appeared, and the expenses, so that the Masses could not be celebrated, could not be sustained by the chaplaincy. But the Masses could not be suspended, firstly, lest the testator be defrauded of his prayers; secondly, because, as is evident from the records, that village where the chapel is located lacks any church; therefore, if the Mass is not celebrated, the inhabitants are in danger of not hearing Mass. The lawyer concludes his prayer, seeking to clear his client from the accusations made against him by his brother. And he shows to the Court, by testimony, and by presenting an account of the revenues, that Sebastian faithfully administered the property; that he took care to celebrate the prescribed Masses; and that he supplemented the income with his own money.

DEFENSE OF THE CHAPLAIN. From the records pertaining to the Priest John, the chaplain, the following points should be noted. He testifies that he did not fulfill the obligations of the chaplaincy, because his brother was constantly pressing him to fulfill the obligations, but never remitted him any income that would cover the expenses. John states that he did not undertake these duties, not having received in advance the fruits of the chaplaincy; for he greatly feared that his brother would later invent more excuses, by which he would deny having presented any income whatsoever. Furthermore, his suspicion is not without foundation, if the conduct of his brother has extended to the point of seeking the removal of the former chaplain, whom he hoped to replace with his own son, who has now been a priest for three years. John's intentions from the very beginning of this dispute are evident from the petition submitted on December 8, 1892, to introduce this case. John denies that he neglected the fulfillment of the chaplaincy's obligations; for he says that he gave his brother, to whom he entrusted all authority, a hundred letters, in which he instructed him to

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use the income of the chaplaincy for pious purposes. Noting the reason for the lawsuit before the secular judge, he states that he has no other means of recovering the income, at least a portion of the principal sum; for his brother...

[*Latin ed. p. 180*]

From the time of the Most Holy Council, the obligation of the charges had been pressing, but not even a single obolus was given to him to fulfill these obligations. He states that the civil judgment, in the first and second instances, was truly carried out concerning the reasons given for the administration, because from the beginning, a renunciation regarding the principal sum had been presented to him, made by him, out of favor towards his brother, in the very act of the redemption (affrancazione) of the chaplaincy from the hands of the Treasury. He recalls that he had given a protestation before the court of Savona, when undertaking the judgment, in order to make it more certain, stating that he would render to it whatever he had recovered through civil authority from the assets of the disputed chaplaincy.

The chaplain intends to define and absolve the second instance of this judgment, having made a renunciation concerning the same act, by order of the Most Holy Congregation. The letters of renunciation are found in the records; and this was done because his brother deposited half of the dowry of the chaplaincy with the court of Savona, with the intention that the revenues from public funds would go to the chaplain. However, this kind of renunciation did not have the effect of nullifying the civil judgment, because this renunciation, made only with regard to the proceedings of the judgment, was not considered sufficient to extinguish the effects of the civil action already instituted.

The chaplain notes that the concession of the deposit was obtained, provided that the brother's intention was different, and that the subsequent course of action was different, as is evident from the letter of January 3, 1897. Finally, the priest, in order to prove that he enjoys a good reputation and standing among his brothers, presents documents dated December 16, 1893.

The brothers testify to the priest's unblemished conscience. Concerning three denunciations given to him by order of the court, and at the request of the patron of the chaplaincy, John states that he was not contumacious, but that he responded with letters in which he presented the same arguments and protested, having submitted his case to the Holy See. It is worth noting, in the judgment of the court of Savona, concerning the determination of the chaplain's deprivation, that not only the obligations of the chaplaincy must

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be considered, but also that it is necessary to carefully examine...

[*Latin ed. p. 181*]

SAVONEN. 181. It is necessary to safeguard the quality of ecclesiastical property, which has been granted to this chaplaincy through the favor of the priest John. Furthermore, it is a principle of canon law that ecclesiastical property cannot be alienated, changed, or deprived without another property of equal value being substituted for it by the same ecclesiastical authority. - According to the common teaching of the canonists, Benedict XIV states in *Inst. Eccl.* XXVI § 21: "The Council of Trent (Session 21, chapter 3) prohibits the alienation of property acquired through due process without the consent of the Bishop, until the cleric has received an ecclesiastical benefice which is deemed sufficient for his support." To better understand this, certain decrees of the Sacred Congregation, interpreters of the same Council, are added. - He who sells property and makes no mention of having accepted orders under that title, if he incurs no censure, it is certain that such an alienation is declared void by law itself. Thus it was decreed on March 6, 1638. Furthermore, on July 20, 1619, it was also decreed that property, by virtue of which someone is promoted, can certainly be exchanged with other goods of no less income or value with the permission of the Bishop, but the Bishop must declare that the goods acquired through the exchange have been substituted for the previous property, so that they cannot be alienated thereafter, except with the prescribed form by the Council. - Finally, on February 14, 1652, these decrees were issued: "The Sacred Congregation responded that a renunciation of property, by virtue of which a cleric was simply initiated into the sacred orders, without the permission of the Bishop, is not upheld, even after the acquisition of a benefice sufficient for his support." ... On February 5, 1604, the Sacred Congregation of the Council judged that execution cannot take place on such property, nor on the fruits thereof necessary for the support of the cleric. However, it is permissible to take in the cause of judgment that part of the fruits which, each year, exceeds that which is necessary, according to the judgment of the ecclesiastical judge, for the cleric to live, not lavishly, but modestly. Furthermore, the creditor himself may accept it as payment.

[*Latin ed. p. 182*]

182 FROM THE HOLY CONGREGATION, to sell the right which belongs to him to this kind of property, which after his death will pertain to the creditor, as a hereditary thing." With these premises, the following questions were proposed: I. Whether the sentence of the ordinary judge of Savona should be confirmed or rejected in this case. II. Whether there is, and how there is, a place for compensation in this case. RESOLUTION. The Holy Congregation, after deliberation on the 17th of June, 1899, decided to respond: To I. The sentence is to be confirmed, having been transferred

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the title of the Holy Order concerning the pensions which the Priest Ricci receives from the Apostolic Datary. To II. Affirmative, according to the letters of the Holy Congregation of the 5th of February, 1898. FROM THE HOLY CONGREGATION FOR INDULGENCES, TREVES. Concerning the extension of the Indulgences of the Secular Psalms of Saint Francis of Assisi. "Exaudiat" to the Tertiaries. From the year 1623, on the 23rd of December, by Pope Urban VIII, an indulgence was granted to the eremitic monks of Camaldoli, and then, by the Most Holy Pope Pius IX, on the 7th of August, 1868, it was extended to the Minor Friars, whom they now call Capuchins, living in monasteries, with the following privilege: "Those (of them) who, having confessed and received Holy Communion, have recited the Psalm, whose beginning is 'Exaudiat' 'te Dominus', etc., with prayers for the Roman Pontiff and the Holy Mother Church, and those who do not know how to recite that Psalm, instead of that Psalm and those prayers, they shall say the Our Father three times and the Angelic Salutation as many times, and at the same time they shall pray for the fostering of union and peace among Christian princes and for the exaltation of the Catholic faith, to those all the indulgences and remissions of sins will follow, which would follow, and can follow, if in the quadragesimal and other years and days in the churches and pious places, and in whatever places in the venerable City of Rome...

[*Latin ed. p. 183*]

From the Sacred Congregation for Indulgences, 183, "Our [decree], which applies both outside of it and elsewhere, in all places, countries, and nations within the Christian world, where stations are established, and to the faithful who visit those stations, indulgences and other spiritual graces are offered; this applies to those who visit otherwise and refer to them." Indeed, by the Apostolic Brief dated July 7, 1896, the Most Holy Pope Leo XIII granted, for a period of five years, that the members of the Secular Third Order of St. Francis might participate in the indulgences enjoyed by the First and Second Franciscan Orders. Furthermore, it was also decreed that the aforementioned members of the Third Order should be granted indulgences for the recitation of the Psalm *Exaudiat*; which, in some places, began to be practiced through pamphlets, leaflets, or small sheets. Since not all agreed on this matter, the Bishop of Treves urged that this Sacred Congregation for Indulgences and Sacred Relics be approached to inquire: Whether the asserted communication of this Indulgence concerning the Psalm *Exaudiat* is maintained for all members of the Secular Third Order of Francis, or at least for those members who depend on the Order of the Brothers Minor Capuchin? After a report on all of the above was made to the Most Holy Pope Leo XIII by myself, the undersigned Prefect of this Sacred Congregation, during an audience granted to me on August 29, 1899, His Holiness responded to both questions with a "No";

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and He ordered that this decision be communicated to the Ordinaries of Rome, so that they would not permit the asserted communication of the concession in question to be printed or announced to the faithful. Given in Rome, from the Secretariat of the same Sacred Congregation, on August 29, 1899. FR. HIERONYMUS M. CARD. GOTTI, Prefect. L. © S. For R. P. D. ANTONIO, Archbishop of Antinoen, Secretary. Ios. M. Canonicus COSELLI, Substitute.

[*Latin ed. p. 184*]

FROM THE HOLY GENERAL INDULGENCES, a dispensation is granted, extending to one year, that is, until the day of October 2, 1900, concerning the time conceded in the Constitution "Ubi primum" dated October 2, 1898, for requesting the Patent Letters from the Reverend Father General of the Order of Preachers, for Confraternities of the Most Holy Rosary which were not established from the beginning with such Letters.

Most Blessed Father, Father Giacinto Maria Cormier, General Procurator of the Preachers, humbly prostrates himself before Your Holiness and states that: Article III of the Apostolic Constitution "Ubi primum" having aroused certain doubts, submitted to Your Holiness by the Most Reverend Bishop of Aosta, and the response to the doubts having been given by the Holy Congregation of Indulgences with the approval of Your Holiness, only on August 10, 1899, the year granted by Your Holiness in the aforementioned Article III, so that the Confraternities of the Most Holy Rosary which are not in order may have time to obtain the Patent Letters from the General of the Preachers, now seems insufficient to achieve the purpose, since the aforementioned Constitution was published on the sixth day before the Kalends of October, that is, October 26, 1898.

Therefore, the Orator, for the sake of souls and the benefit of Indulgences, implores the granting of another year of time, during which the Ordinaries and Rectors of the Confraternities, having knowledge of the responses of August 10, 1899, will have every facility to obtain, if necessary, the required documents.

That the grace, etc.

His Holiness, Pope Leo XIII, in an audience held on September 8, 1899, by the undersigned Cardinal Prefect of the Holy Congregation for Indulgences and Sacred Relics, benignly granted the requested grace, notwithstanding any contrary decrees.

Given at Rome, from the Secretariat of the same Holy Congregation, on September 8, 1899.

Father Hieronymus M. Gotti, Prefect.

L. & S. For the Most Reverend Archbishop of Antinoen.

Secretarius.

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Jos. M. Canonicus Coselli, Substitute.

[*Latin ed. p. 185*]

FROM THE HOLY CONGREGATION OF INDULGENCES, 185, Aosta. Various doubts concerning Confraternities named after the Most Holy Rosary. The Bishop of Augusta presented several doubts to this Holy Congregation of Indulgences for clarification, which arose after the recent publication of the Constitution *Ubi primum* concerning Confraternities named after the Most Holy Rosary, by order of the Most Holy Father Leo XIII. He added others which seem to require examination in light of certain Decrees of this Holy Congregation, since the question is raised as to whether, and how, these Decrees are applicable to Confraternities of the Most Holy Rosary. The doubts presented are as follows:

I. In the Diocese of Augusta, Confraternities of the Most Holy Rosary have existed for a long time in almost all parochial churches, but the official letters from the Master General of the Order of Preachers are, in many places, lost. Therefore, the petitioner asks whether, for the canonical existence of a Confraternity, it is sufficient to have some document, such as a record of the erection itself, or an inscription commemorating the same in the register of members of the Confraternity, or some other authentic document, to prove that the official letters from the Master General were indeed granted for that church; or whether new official letters from the Master General are required?

II. Is the law sanctioned by the Holy Congregation of Indulgences on January 8, 1861 (in the formula to be observed in substance for the erection of Confraternities), under number V, with these words: "that the graces and indulgences granted to the Confraternity be promulgated, with the prior knowledge of the Ordinary," considered abrogated by the Decree of the Holy Congregation of Indulgences dated May 20, 1896, concerning the Order of Preachers, in its entirety? And if so, then:

III. Must the knowledge of the Ordinary be expressed in writing at the end of the Summary of Indulgences?

IV. Are the pious Unions of the Living Rosary, instituted by the Master General of the Order of Preachers, subject to the prescriptions of the Clementine Code, as are the Confraternities of the Most Holy Rosary, according to the Decree of the Holy Congregation of Indulgences dated August 25, 1897, concerning the City and the World, in its entirety?

V. Can the Bishop tolerate either Confraternities properly so-called, or pious Unions under the title of the Most Holy Rosary, without...

[*Latin ed. p. 186*]

186 Concerning the intervention of the Master General of the Order of Preachers regarding indulgences granted by parishes, or other priests, even with a condition or pretext, whether such confraternities or pious unions

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enjoy the privileges and indulgences of confraternities of the Most Holy Rosary?

VI. Whether, notwithstanding the Decree of the Sacred Congregation of Indulgences dated August 25, 1897, in certain cities and throughout the world, the Rectors of confraternities of the Most Holy Rosary can, by means of their registry, allow the names of the deceased to be inscribed, even for this purpose alone, so that the deceased may participate in the merits of the confraternity, and be commended through the prayers of the members?

VII. Whether the Decrees of the Sacred Congregation of Indulgences dated December 12, 1892, in Cologne, and November 15, 1893, also in Cologne, concerning the sodality of Saint Scapular, can be applied to the confraternity of the Most Holy Rosary, so that confraters of the Most Holy Rosary, received and registered by priests who have the authority, may obtain all the indulgences of the confraternity by virtue of their legitimate reception, even if their names have not yet been materially inscribed with the names of other members in the registry of the confraternity?

VIII. Whether, provided the confraternity of the Most Holy Rosary retains its privilege, a grace granted by the Holy See which is not considered revoked unless specifically mentioned, priests, using the formula prescribed by Innocent XI for the indulgence to be obtained by confraters of the Most Holy Rosary at the hour of death, act validly, or whether they are obliged to use the formula given in the Constitution of Benedict XIV, *Pia Mater*?

IX. Whether the formula for obtaining the indulgence, to be recited by confraters at the hour of death, can be recited only by the Rectors of the confraternities and by priests delegated by the Master General of the Order of Preachers, or, in the case of confraters of the Most Holy Rosary, by any priest, even outside of confession?

X. Whether confraternities of the Most Holy Rosary erected by Apostolic Legates, Nuncios, and other prelates by virtue of a special apostolic faculty, require a new erection by the Master General of the Order of Preachers?

And the Eminent and Reverend Fathers, in the General Congregation held at the Vatican, responded on August 3, 1899:

To I: Affirmative, to the first part; Negative, to the second part.

To II: Negative.

To III: It is not necessary.

To IV: Negative.

[*Latin ed. p. 187*]

FROM THE SACRED CONGREGATION OF INDULGENCES, instruction number 187, concerning doubts to be resolved, the following is stated: Whether, by the Apostolic Letters *Ubi primum*, issued by the Most Holy Pope Leo XIII on October 2, 1898, to Bishops and others, granting them the

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faculty, in general, of establishing confraternities, the faculty of establishing confraternities or pious unions under the title of the Most Holy Rosary has been revoked, without the intervention of the General Master of the Order of Preachers? The answer is: We request that the Most Holy Father deign to reveal his mind. To the fifth doubt, negatively, the word is given to the Most Holy Father. To the seventh doubt, affirmatively. To the eighth doubt, as follows: Whether, for granting the plenary Indulgence to confraters of the Most Holy Rosary at the hour of death, the formula approved by Innocent XI should be used, or rather, the formula prescribed by Benedict XIV in the Constitution *Pia Mater*? The answer is: Negatively to the first part; affirmatively to the second. To the ninth doubt, formulated in this manner: Whether the blessing, with the attached plenary Indulgence, to be granted to confraters of the Most Holy Rosary at the hour of death, should be administered by priests delegated by the General Master of the Order of Preachers, or rather, by any priest, even outside of confession? The answer is: Negatively to the first part; affirmatively to the second. To the tenth: Not proposed. And having presented all of these matters, as I have written below, to the Most Holy Lord Our Pope Leo XIII, in an audience held on August 10, 1899, the Most Holy Father benignly approved all the resolutions of the Fathers, and deigned to reveal his mind concerning the fifth doubt, expressly stating: "We have revoked, and We wish to be understood as having revoked, all faculties granted for establishing pious confraternities and unions under the title of the Most Holy Rosary without the patent letters of the General Master of the Order of Preachers; so that if any confraternities or pious unions are established in the future under the title of the Most Holy Rosary without the aforementioned letters, they shall not enjoy any benefits, privileges, or indulgences, which the Roman Pontiffs have granted to the legitimate and true sodality of the Most Holy Rosary; indeed, they will not enjoy them at all."

[*Latin ed. p. 188*]

188 FROM THE HOLY CONGREGATION OF INDULGENCES: They shall not enjoy other Indulgences, which are commonly granted to all, under any title, to canonically erected confraternities. Notwithstanding any contrary things whatsoever." Given in Rome, from the Secretariat of the Holy Congregation for Indulgences and Sacred Relics, on the 10th of August, 1899. Father HIERONYMUS M. CARD. GOTTI, Prefect. L. * S. T A. SABATUCCI, Archbishop of Ancona, Secretary.

FROM THE HOLY CONGREGATION OF THE HOLY ROMAN CHURCH, THE SACRED INQUISITION: A DOUBT is raised: Whether a priestly ordination is valid, in which only the imposition of hands was present; and it is doubted concerning the second [imposition], whether the Bishop, even for a moment, extended his hands over those being ordained.

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Most Blessed Father, the Bishop N. N., prostrate at the feet of Your Holiness, presents the following doubt concerning the validity of the priestly ordinations performed by a Bishop of this Diocese, one of his predecessors, many years ago. Namely, the ordaining Bishop, after having imposed both hands upon each of those being ordained, due to an involuntary distraction, did not extend his right hand over all those being ordained (or, at most, extended it for a short time, as one of those ordained affirms having seen, but now does not certainly remember), but soon after, he ordained the Pontifical book with his right hand, and while reciting the exhortation "Oremus fratres, etc.," he held the same book with both hands, so that, although his arms and hands were materially extended, he did not at all have the appearance of a man extending his hand over them. Several people noticed this defect, but no one warned the Bishop about it. After the ordination was completed, whether this was certainly valid, a doubt was raised by some. Therefore, the pleading Bishop humbly beseeches Your Holiness to deign to judge what should be done in this case.

[*Latin ed. p. 189*]

FROM THE SACRED CONGREGATION FOR THE INQUISITION, July 19, 1899, Feria IV. In a General Congregation held by the Most Reverend and Right Reverend Cardinals, General Inquisitors, concerning the aforementioned question, and after the vote of the Most Reverend Consultors, the same Most Reverend and Right Reverend Fathers judged it necessary to respond as follows: Since it is not established that the imposition of hands, even for a moment, makes a private repetition of the sacrament necessary, under any condition, even outside of the prescribed times; and it is to be hoped that the Most Holy Father will deign to remedy and supplement, from the treasure of the Church, any acts that may perhaps have been improperly performed, notwithstanding any objections to the contrary. On the following day, Feria VI, July 21 of the same month and year, during the customary audience granted to the Reverend Father Assessor S. O., after a report was made to the Most Holy Father, Pope Leo XIII, regarding all matters, the same Most Holy Lord approved the response of the Most Reverend Fathers in all respects, and graciously granted permission. I. CANON MANCINI, S. R. et U., Inquisitorial Notary.

QUESTION: Whether it is permissible for physicians to participate in discussions concerning hypnotic suggestions.

Most Blessed Father, N. N., Doctor of Medicine, prostrated before Your Holiness, humbly asks whether he may participate in discussions that are currently being held by the Society of Medical Sciences of N. regarding hypnotic suggestions in the treatment of sick children. This involves not only discussing already completed events, but also conducting new experiments, whether they can be explained by natural reasons or not. Therefore, the speaker, in order not to expose himself to the danger of error, awaits

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the oracle of the Holy See.

July 26, 1899, Feria IV. In a General Congregation held by the Most Reverend and Right Reverend Cardinals, General Inquisitors, concerning the aforementioned requests, and after the vote of the Most Reverend Consultors, the same Most Reverend and Right Reverend Fathers ordered that the following response be given: Regarding experiments that have already been performed, it is permissible to proceed, provided that there is no danger of superstition or scandal; and furthermore, the speaker must be prepared to comply with the mandates of the Holy See, and must not engage in theological arguments.

[*Latin ed. p. 190*]

190 FROM THE SACRED CONGREGATION OF THE INQUISITION: Regarding new experiments, if the matter pertains to acts that seem to surpass the powers of nature, it is not permitted; but if there is doubt about this, with the prior declaration that one wishes to have no part in acts of a supernatural nature, it may be tolerated, provided that there is no danger of scandal.

QUESTION: Whether it is permissible for a "Monte di Pietà" [charitable lending institution] to charge an annual interest rate of two percent on a loan of one hundred.

Most Reverend Father,

Bishop N. N. humbly presents to Your Eminence that in his diocese there exists a "Monte di Pietà" with the following conditions:

1. It grants loans with a monthly interest rate of two percent.

2. The owner of the capital receives only half a percent each month.

3. One percent is required for administrative expenses.

4. What remains after these expenses is applied to form the capital fund of the aforementioned institution or to other expenses of charity and beneficence.

It should be noted that the founder of this "Monte di Pietà" disbursed the sum of forty thousand scudi solely for the purpose of charity, which yielded him each month two or three percent, and that before the founding of this "Monte di Pietà," the lending banks in that place charged interest rates of ten or twelve percent per month, to the grave detriment of the poor.

The aforementioned Bishop humbly implores the authority to authorize the continuation of the operations of that "Monte di Pietà" under the aforementioned conditions.

Thursday, July 26, 1899.

In a General Congregation held by the Most Reverend Cardinals, General Inquisitors, after the aforementioned requests were presented, and with the prior vote of the Most Reverend Consultors, the aforementioned

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Cardinals and Most Reverend Fathers were instructed to respond:

"Let it be so, provided that it is understood that one is prepared to adhere to the mandates of the Holy Church."

On the following Saturday, July 28 of the same month and year, during the customary audience granted by His Holiness Pope Leo XIII, Divine Providence, to the Most Reverend Fathers, Assessors, after a report on all of this was made, His Holiness approved the response of the Cardinals.

I. CAN. MANCINI, Secretary of the Holy Roman and Universal Inquisition.

[*Latin ed. p. 191*]

FROM THE SACRED INQUISITION, QUESTION 191: Whether a marriage celebrated before a parish priest who is not the proper one, by delegation from the proper parish priest, is valid, when one of the parties, designated by the proper priest, is represented by another.

Most Blessed Father, the Bishop N. N., prostrate at the feet of Your Holiness, humbly presents the following case. Joseph F. and Mary G., both parishioners of the Church of Saint Sebastian, after the marriage banns had been duly published for them in the aforementioned parish church, requested the parish priest of that same church to grant them permission to celebrate their marriage in another parish, namely, the parish of Saint Andrew. The parish priest acceded to their request and gave them a letter to the parish priest of Saint Andrew, by which he delegated him to bless the marriage between the two aforementioned persons, expressly named, namely, Joseph F. and Mary G. However, before the parish priest of Saint Andrew, Joseph F. did not appear with Mary G., but George M. appeared with Mary G. to contract the marriage. The parish priest of Saint Andrew, who did not personally know the individuals, believing them to be those mentioned in the delegation letter, blessed the marriage between George M. and Mary G., and not between Joseph F. and Mary G., as was stated in the aforementioned delegation letter.

Since George M. feared that his marriage with Mary G. would be prevented by her parents if his name appeared in the publication of the banns, and if he were to personally appear before his proper parish priest, he maliciously and with the consent of the girl, presented another person, namely, Joseph F., in his place, for whom the banns had been published, and for whose benefit the parish priest gave letters of delegation to another priest to bless the marriage. On the very day that this marriage was celebrated, the parents and relatives of George M. prevented the bride from being given to the groom's house, and immediately reported the case to the Curia. The Bishop immediately ordered the separation of these married individuals, until the case was examined and decided.

Therefore, after an investigation was instituted and carried out according

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to the norms of the Constitution *Dei Miseratione*, the Bishop rendered a judgment against the validity of the attempted marriage between George M. and Mary G., declaring—

[*Latin ed. p. 192*]

192 FROM the Most Holy Congregation of the Inquisition, it is declared that the aforementioned marriage is invalid and of no effect, due to the impediment of clandestine marriage. For neither of the spouses belonged to the jurisdiction of the parish of Saint Andrew, who performed the marriage, or who was present at the marriage only by delegation. However, the delegation was granted to him by the parish priest who had jurisdiction to bless the marriage between Joseph F. and Mary G., and not between George M. and Mary G. The delegate, moreover, has only the authority that was communicated to him by the one who delegated; the Episcopal Court has no doubt concerning the judgment it has rendered, and believes that the marriage in question is entirely invalid. However, because some missionaries and priests hold a contrary opinion, he humbly requests that the Most Holy Congregation deign to inform him whether he has correctly rendered judgment concerning the invalidity of the aforementioned marriage. Thursday, August 2, 1899. In the General Congregation of the Holy Roman and Universal Inquisition, before the Most Eminent and Most Reverend Cardinals, General Inquisitors in matters of faith and morals, concerning the aforementioned case, after diligent and thorough discussion, and with the vote of the Most Reverend Consultors having been heard, the same Most Eminent and Most Reverend Fathers ordered that the following be written: Affirmative; that is to say, that the judgment of the Episcopal Court is to be confirmed. On the following Saturday, August 6th of the same month and year, during the customary audience granted by His Holiness Pope Leo XIII to the Most Reverend Father, the Reverend Prelate, Assessor of the Holy Office, His Holiness approved the aforementioned resolution of the Most Eminent and Most Reverend Fathers. I. CAN. MANCINI, of the Holy Roman and Universal Inquisition.

[*Latin ed. p. 193*]

193 ENCYCLICAL LETTER from His Holiness Pope Leo XIII to the Archbishops, Bishops, and Clergy of France. Venerable Brothers, most dear Sons. From the day that We were raised to the pontifical Chair, France has been constantly the object of Our solicitude and of Our particular affection. For it is in her, indeed, that, moved by the inscrutable designs of His mercy upon the world, God has, throughout the centuries, especially chosen men apostolic, destined to preach the true faith to the farthest reaches of the globe, and to bring the light of the Gospel to nations still plunged in the darkness of paganism. He has predestined her to be the defender of His Church and the instrument of His great works: *Gesta Dei per Francos*. To such a high

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mission correspond, obviously, many and grave duties. Desirous, as were Our predecessors, of seeing France faithfully fulfill the glorious mandate with which she has been charged, We have already, on several occasions during Our long pontificate, addressed to her Our counsel, Our encouragement, and Our exhortations. We did so especially in Our Encyclical Letter of February 8, 1884, *Nobilissima Gallorum gens*, and in Our Letter of February 16, 1892, published in the idiom of France, and which begins with these words: In the midst of solicitude. Our words have not been unfruitful, and We know from you, Venerable Brothers, that a large part of the French people still honors the faith of their ancestors and faithfully fulfills the duties that it imposes. On the other hand, We cannot ignore the fact that the enemies of this holy faith have not remained inactive, and that they have succeeded in banishing all principle of religion from a great number of families, which, as a result, live in a lamentable ignorance of revealed truth, and in complete indifference to everything that pertains to their spiritual interests and the salvation of their souls. Therefore, and rightly, We congratulate France for being to the infidel nations a center of apostolate; We must also encourage the efforts of those of her sons, who, enlisted in the priesthood of Jesus Christ, work to evangelize their compatriots, and to protect them against the invasion of naturalism.

[*Latin ed. p. 194*]

194 ENCYCLICAL LETTER concerning realism and incredulity, with their disastrous and inevitable consequences. Called by the will of God to be the saviors of the world, priests must always, and above all, remember that, by the very institution of Jesus Christ, they are "the salt of the earth" (1), from which Saint Paul, writing to his disciple Timothy, rightly concludes "that they must be an example to the faithful in their words and in their dealings with their neighbor, by their charity, their faith, and their purity" (2). That this should be the case with the clergy of France, taken as a whole, is always a great consolation to Us, Venerable Brothers, whether through the quadrennial reports that you send Us concerning the state of your dioceses, in accordance with the Constitution of Sixtus V; or through the oral communications that We receive from you, when We have the joy of conversing with you and receiving your confidences. Yes, the dignity of life, the fervor of faith, the spirit of devotion and sacrifice, the zeal and generosity, the inexhaustible charity towards one's neighbor, the energy in all noble and fruitful endeavors that aim at the glory of God, the salvation of souls, the happiness of the homeland: these are the traditional and precious qualities of the French clergy to which We are pleased to give here a public and paternal testimony. However, precisely because of the tender and profound affection that We bear for them; both to fulfill the duty of Our apostolic ministry, and to respond to Our fervent desire to see them always live up to their great mission, We have resolved, Venerable Brothers,

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to address in this Letter certain points that the present circumstances most urgently recommend to the conscientious attention of the leading pastors of the Church of France, and of the priests who work under their authority. First of all, it is evident that, the more elevated, complex, and difficult an office is, the longer and more careful must be the preparation of those who are called to fulfill it. Now, does there exist on earth a dignity higher than that of the priesthood, and a more demanding ministry, a greater responsibility, than that of...?

(1) Matthew V, 13.

(2) I Timothy IV, 12.

[*Latin ed. p. 195*]

ENCYCLICAL LETTER 195: What is the aim that encompasses all free actions of man? Is it not the governance of souls that the Fathers rightly called "the art of arts," that is, the most important and delicate of all labors to which a man can dedicate himself for the benefit of his fellow men: "ars artium regimen animarum"? (1) Therefore, nothing should be neglected in preparing those whom a divine vocation calls to properly and fruitfully fulfill such a mission. Above all, it is fitting to discern, among young children, those in whom the Most High has placed the seed of such a vocation. We know that, in a number of dioceses in France, thanks to your wise recommendations, the parish priests, especially in the countryside, apply themselves with a zeal and selflessness that We cannot too highly praise, to begin themselves the elementary studies of children in whom they have noticed a serious disposition to piety and aptitudes for intellectual work. The parochial schools are thus the first step of this ascending scale, which, first through the young, and then through the major seminaries, will lead young men to the priesthood, to whom the Savior repeated the call addressed to Peter and Andrew, to John and James: "Leave your nets; follow me; and I will make you fishers of men" (2). As for the minor seminaries, this very salutary institution has often and rightly been compared to nurseries, where plants that require special and constant care are set aside, through which alone they can bear fruit and compensate for the labors of those who apply themselves to cultivate them. In this regard, We renew the recommendation that Our predecessor, Pope Pius IX, addressed to the Bishops in his Encyclical of December 8, 1849. It referred itself to one of the most important decisions of the Fathers of the Holy Council of Trent. It is the glory of the Church of France, in this present century, to have taken it most seriously, since not a single one of the 94 dioceses of which it is composed lacks one or more minor seminaries. We know, Venerable Brothers, of the concerns...

(1) S. Greg. M. Lib. Regulae Past. P. 1, c. 1.

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(2) Matth. IV, 19.

[*Latin ed. p. 196*]

196 ENCYCLICAL LETTER: We surround these institutions, which are so justly dear to your pastoral zeal, and We congratulate you on them. The priests who, under your esteemed guidance, work to form the youth destined later to enlist in the ranks of the priestly militia, should often meditate before God on the exceptional importance of the mission entrusted to them. It is not their task, as it is for ordinary teachers, simply to instruct these children in the elements of letters and the humanities. This is only the smallest part of their work. Their attention, their zeal, and their dedication must constantly be aroused and active, both to study continuously, under the gaze and in the light of God, the souls of the children and the significant indications of their vocation to the service of the altar; and also to help the inexperience and weakness of their young disciples, to protect the precious grace of the divine call against all harmful influences, whether from without or from within. They must therefore fulfill a humble, laborious, and delicate ministry, which demands constant self-denial. To support their courage in the fulfillment of their duties, they will take care to renew it from the purest sources of the spirit of faith. They must never lose sight of the fact that they are not preparing the children whose minds, hearts, and characters they are forming for earthly functions, however legitimate and honorable they may be. The Church entrusts them with these children so that they may one day become priests, that is, missionaries of the Gospel, continuers of the work of Jesus Christ, dispensers of His grace and sacraments. May this entirely supernatural consideration constantly mingle with their dual activity as teachers and educators, and be like the leaven that must be mixed with the best wheat, according to the Gospel parable, to transform it into a savory and substantial bread (1). If the constant concern for a primary and indispensable formation in the spirit and virtues of the priesthood must inspire the teachers of your seminaries in their relationships with their students, it is to this same principal and guiding idea that the plan of studies, and the entire structure of discipline, will refer. We do not ignore, Venerable Brothers (1) Matthew XIII, 33.

[*Latin ed. p. 197*]

ENCYCLICAL LETTER 197: In a certain measure, you are obligated to take into account the programs of the State and the conditions imposed by it for the attainment of university degrees, since, in a number of cases, these degrees are required of priests employed either in the direction of free schools, placed under the protection of Bishops or religious Congregations, or in higher education in the Catholic Faculties that you have so commendably founded. Moreover, it is of the utmost importance, for maintaining the influence of the clergy on society, that it have within its ranks a sufficient

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number of priests who yield to no one in learning, whose degrees are the official confirmation, to those masters whom the State trains for its lycées and its Universities. However, and after having given to this requirement of the programs the consideration that circumstances demand, it must be that the studies of those aspiring to the priesthood remain faithful to the traditional methods of past centuries. These are the ones that formed the eminent men of whom the Church of France is so justly proud, the Pétau, the Thomassin, the Mabillon, and so many others, not to mention your Bossuet, called the eagle of Meaux, because, whether through the elevation of thought or the nobility of language, his genius soars in the most sublime regions of Christian science and eloquence. Now, it is the study of the humanities that has powerfully helped these men to become very valiant and useful workers in the service of the Church, and has made them capable of composing works truly worthy of posterity, and which still contribute to this day to the defense and dissemination of revealed truth. Indeed, it is the characteristic of the humanities, when taught by Christian and skilled masters, to rapidly develop in the souls of young people all the germs of intellectual and moral life, while at the same time contributing to give to judgment rectitude and breadth, and to language elegance and distinction. This consideration acquires special importance when it comes to the Greek and Latin literatures, which are the repositories of the masterpieces of sacred science that the Church rightly counts among its most precious treasures. Half a century ago, during this too short period of true freedom, during which the Bishops of France could meet and concert...

[*Latin ed. p. 198*]

198 ENCYCLICAL LETTER: Concerning matters which they deemed most conducive to the advancement of religion, and, consequently, most beneficial to public peace, several of your provincial councils, Venerable Brothers, most expressly recommended the cultivation of the Latin language and literature. Your colleagues of that time were already lamenting that, in your country, the knowledge of Latin was tending to diminish (1). If, for several years, the pedagogical methods in force in state institutions have gradually reduced the study of the Latin language, and have eliminated exercises in prose and poetry which our predecessors rightly deemed should occupy a prominent place in the classrooms of colleges, then the minor seminaries will take precautions against these innovations inspired by utilitarian concerns, and which work to the detriment of the solid formation of the mind. To these ancient methods, so often justified by their results, we would gladly apply the words of St. Paul to his disciple Timothy, and, with the Apostle, we would say to you, Venerable Brothers: "Guard the deposit" (2), with jealous care. If, God forbid, they should one day completely disappear from other public schools, let your minor seminaries and free colleges preserve them with an intelligent and patriotic

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solicitude. You will thus imitate the priests of Jerusalem who, wishing to shield the sacred fire of the Temple from barbaric invaders, hid it so that it could be found again and restored to its full splendor when the bad times had passed (3). Once in possession of the Latin language, which is like the key to sacred science, and with the faculties of the mind sufficiently developed by the study of the liberal arts, young men who are destined for the priesthood proceed from the minor to the major seminary. There, by piety and the exercise of clerical virtues, they will prepare themselves for the reception of the holy Orders, while also dedicating themselves to the study of Philosophy and Theology.

(1) "Indeed, the Latin language is becoming obsolete among us, and there is no one who does not know it, and prudent men lament this." (Litt. Synod. Patrum Conc. Paris, ad clericos et fideles, an. 1849, in Collectio Lacensis Tom. -IV, col. 86).

(2) 1 Timothy 6:20.

(3) 1 Maccabees 1:19-22.

[*Latin ed. p. 199*]

ENCYCLICAL LETTER 199. We stated this in Our Encyclical *Aeterni Patris*, whose careful reading We again recommend to your seminarians and their teachers, and We stated it relying on the authority of St. Paul: it is through vain subtleties, of false philosophy, "per philosophiam et inanem fallaciam," (1) that the minds of the faithful are most often deceived, and that the purity of faith is corrupted among men. We added, and the events that have transpired over the past twenty years have sadly confirmed the reflections and apprehensions that We expressed at that time: "If one pays attention to the critical conditions of the times in which we live, if one embraces in thought the state of affairs, both public and private, one will easily discover that the cause of the evils that oppress us, as well as those that threaten us, consists in this: that erroneous opinions on all things, both divine and human, from the schools of philosophers, have little by little infiltrated all ranks of society and have come to be accepted by a large number of minds" (2). We again condemn these doctrines which have nothing of true philosophy but the name, and which, undermining the very foundation of human knowledge, logically lead to universal skepticism and irreligion. It is a deep sorrow to us to learn that, for some years now, Catholics have believed they could follow a philosophy that, under the specious pretext of freeing human reason from all preconceived notions and all illusions, denies it the right to affirm anything beyond its own operations, thus sacrificing to a radical subjectivism all the certainties that traditional metaphysics, consecrated by the authority of the most vigorous minds, gave as necessary and unshakable foundations for the demonstration of the existence of God, of the spirituality and the immortality of the soul, and of the objective reality of the external world. It is deeply

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regrettable that this doctrinal skepticism, of foreign origin and of Protestant origin, has been so readily received in a country justly famous for its love of clarity of ideas and of language. We know, Venerable Brothers, that (1) Col. II, 8. (2) Encyclical *Aeterni Patris*.

[*Latin ed. p. 200*]

200. ENCYCLICAL LETTER: Regarding this matter, We share your just concerns, and We trust that you will redouble your diligence and vigilance in preventing this fallacious and dangerous philosophy from infiltrating the instruction of your Seminaries, and that you will more than ever employ the methods that We recommended in Our aforementioned Encyclical of August 4, 1879. In our time, the students of both your minor and major Seminaries cannot remain ignorant of the study of the physical and natural sciences. Therefore, it is fitting that they be introduced to them, but with moderation and in wise proportions. It is therefore not at all necessary that, in the courses of the sciences, which are appended to the study of philosophy, the professors feel obligated to expound in detail the almost countless applications of the physical and natural sciences to the various branches of human industry. It suffices that their students know with precision the great principles and the summary conclusions, so that they may be able to resolve the objections that the unbelievers draw from these sciences against the teachings of Revelation. Above all, it is important that, for at least two years, the students of your major Seminaries study with diligent care rational philosophy, which, as a learned Benedictine, Dom Mabillon, said, will be of such great help to them, not only in learning to reason well and to form just judgments, but also in enabling them to defend the orthodox faith against the captious and often sophistic arguments of the adversaries (1). Next come the sacred sciences properly so called, namely, dogmatic theology and moral theology, Holy Scripture, ecclesiastical history, and Canon Law. These are the sciences proper to the priest. He receives a first introduction to them during his stay in the major Seminary; he must continue to study them throughout the rest of his life. Theology is the science of the things of faith. It is nourished, as Pope Sixtus V said, by those ever-flowing sources which are the Holy Scriptures, the decisions of the Popes, and the decrees of the Councils (2).

(1) *De Studiis Monasticis*, Part II, c. 9.

(2) Apostolic Constitution, *Triumphantis Ierusalem*.

[*Latin ed. p. 201*]

ENCYCLICAL LETTER 201. Called positive and speculative, or scholastic, according to the method employed in its study, Theology does not merely propose truths to be believed; it scrutinizes their innermost essence, it shows their relationships, and, with the aid of the resources provided by true philosophy, it explains, develops, and adapts them exactly to all

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the needs of the defense and propagation of the faith. Just as to Bezalel, the Lord gave His spirit of wisdom, understanding, and skill, entrusting him with the mission to build His Temple, so the theologian "sculpts the precious stones" of the divine dogmas, arranges them with art, and by the framework in which he places them, brings out their brilliance, charm, and beauty" (1). Therefore, it is rightly that Sixtus V calls this theology (and he speaks specifically here of scholastic theology) a gift from heaven, and requests that it be maintained in the schools and cultivated with great zeal, as it is the most fruitful thing for the Church (2). Is it necessary to add that the books par excellence in which students can study scholastic theology with the greatest benefit is the Summa Theologica of Saint Thomas of Aquin? We therefore desire that the professors take care to explain the method to all their students, as well as the principal articles relating to the Catholic faith. We also recommend that all seminarians have at hand and frequently read the golden book, known as the Catechism of the Holy Council of Trent, or the Roman Catechism, dedicated to all priests invested with the pastoral charge (Catechismus ad parochos). Remarkable both for the richness and accuracy of its doctrine and for the elegance of its style, this catechism is a precious compendium of all dogmatic and moral theology. Whoever possesses it thoroughly will always have at his disposal the resources with which a priest can preach fruitfully, and properly fulfill the important ministry of confession and direction (1) Pretiosas divini dogmatis gemmas insculpe, fideliter coapta, adorna sapienter; aduce splendorem, gratiam, venustatem. (St. Vincent Lir. Communit, c. 2). (2) Same Constitution.

[*Latin ed. p. 202*]

202 ENCYCLICAL LETTER. souls, and to be in a state of being able to victoriously refute the objections of the unbelievers. Concerning the study of the Holy Scriptures, We again call your attention, Venerable Brothers, to the teachings that We have given in Our Encyclical Providentissimus Deus (1), of which We desire that the Professors make their disciples aware, adding the necessary explanations. They will especially warn them against alarming tendencies that seek to enter into the interpretation of the Bible, and which, if they were to prevail, would soon ruin its inspiration and supernatural character. Under the specious pretext of depriving the adversaries of revealed truth of the use of arguments that seemed irrefutable against the authenticity and veracity of the Holy Books, certain Catholic writers have deemed it very clever to adopt these arguments themselves. By virtue of this strange and perilous tactic, they have worked, with their own hands, to create breaches in the walls of the city that they were charged to defend. In Our aforementioned Encyclical, as well as in another document (2), We have justly condemned these dangerous presumptions. While encouraging our exegetes to keep abreast of the progress of criticism, We have firmly maintained the principles sanctioned in this matter by the traditional au-

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thority of the Fathers and the Councils, and renewed in our own time by the Council of the Vatican. The history of the Church is like a mirror, in which the soul of the Church shines forth through the centuries. More than civil and profane history, it demonstrates the sovereign freedom of God and His providential action upon the course of events. Those who study it must never lose sight of the fact that it contains a collection of dogmatic facts, which are imposed upon faith, and which it is not permitted to anyone to doubt. This guiding and supernatural idea that presides over the destiny of the Church is at the same time the beacon whose light illuminates its history. However, and because the Church, which continues among men the life of the Incarnate Word, is concerned... (1) Providentissimus Deus, November 18, 1893. (2) "Genus interpretandi audax atque immodice liberum" (Letter to the Minister General of the Brothers Minor, November 25, 1898).

[*Latin ed. p. 203*]

ENCYCLICAL LETTER 203, composed of a divine element and a human element, the latter must be expounded by the masters and studied by the students with great integrity. As it is said in the Book of Job, "God has no need of our lies" (1). The historian of the Church will be all the more able to bring out its divine origin, superior to any purely earthly and natural concept, if he has been more loyal in not concealing any of the trials that the faults of his children, and sometimes even of his ministers, have inflicted upon this Bride of Christ throughout the centuries. Studied in this way, the history of the Church, in itself, constitutes a magnificent and conclusive demonstration of the truth and divinity of Christianity. Finally, to complete the cycle of studies by which candidates for the priesthood must prepare for their future ministry, it is necessary to mention Canon Law, or the science of the laws and jurisprudence of the Church. This science is closely and logically linked to that of Theology, of which it shows the practical applications to all that concerns the government of the Church, the dispensation of sacred things, the rights and duties of its ministers, the use of temporal goods, of which it is in need for the fulfillment of its mission. "Without knowledge of Canon Law," said the Fathers of one of your provincial councils, "theology is imperfect, incomplete, like a man who would be deprived of an arm. It is ignorance of Canon Law that has favored the birth and spread of many errors concerning the rights of the Roman Pontiffs, of the bishops, and of the power that the Church holds by its own constitution, the exercise of which it proportionates to the circumstances" (2). We will summarize everything that We have said about your minor and major seminaries with these words of St. Paul, which We commend to the frequent meditation of the masters and students of your ecclesiastical institutions: "O Timothy, guard" (1) Nunquid Deus indiget vestro mendacio? (Job XIII, 77). (2) The solidae scientiae doctrinarum theologicarum coniungi debet

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cognitio Sacrorum Canonum... sine qua theologia erit imperfecta et quasi manca, nec non multi errores de Romani Pontificis, episcoporum iuribus ac praesertim de potestate quam Ecclesia iure proprio exercuit, pro varietate temporum, forsitan serpent et paulatim invalescent. (Conc. prov. Bitur. a. 1868).

[*Latin ed. p. 204*]

204 ENCYCLICAL LETTER: "Guard carefully the deposit entrusted to you. Shun profane novelties of words and objections that cloak themselves under the false name of science; for all those who have professed them have erred concerning the faith" (1). It is to you now, most beloved Sons, who, having been ordained priests, have become the co-workers of your Bishops, that We wish to address Our words. We know, and the entire world knows as We do, the qualities that distinguish you. No good work is there of which you are not either the inspirers or the apostles. Docile to the counsels that We gave in Our Encyclical *Rerum Novarum*, you go to the people, to the workers, to the poor. You seek by all means to help them, to moralize them, and to make their lot less harsh. For this purpose, you organize meetings and congresses; you found patronage societies, circles, rural credit unions, and offices of assistance and placement for workers. You strive to introduce reforms in the economic and social order, and for this difficult labor you do not hesitate to make notable sacrifices of time and money. And for this reason, you write books or articles in newspapers and periodicals. All these things, in themselves, are very praiseworthy, and in them you give clear proof of good will, of intelligent and generous dedication to the most pressing needs of contemporary society and of souls. However, most beloved Sons, We believe it necessary to paternally call your attention to some fundamental principles, to which you will certainly conform, if you wish that your actions be truly fruitful and productive. Remember above all that, in order to be beneficial to the good and worthy of praise, zeal must be "accompanied by discretion, rectitude, and purity." Thus expresses the grave and judicious Thomas à Kempis (2). Before him, St. Bernard, the glory of your country in the twelfth century, that tireless apostle of all great causes that touched upon the honor of God, the rights (1) "O Timothy, guard the deposit, avoiding profane novelties of words, and oppositions under the false name of science, which some, promising these things, have erred concerning the faith" (1 Timothy VI, 20-21). (2) "The zeal for souls is to be praised if it is discreet, righteous, and pure."

[*Latin ed. p. 205*]

ENCYCLICAL LETTER 205 to the Church, for the good of souls, did not hesitate to say that "separated from knowledge, and from the spirit of discernment, zeal is intolerable... that the more ardent the zeal, the more necessary it is that it be accompanied by that discretion which

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orders the exercise of charity, and without which even virtue itself can become a fault and a principle of disorder" (1). But discretion in works, and in the choice of means to make them succeed, is all the more indispensable, as the present times are more troubled and beset with more difficulties. A certain act, a certain measure, a certain practice of zeal, may be excellent in themselves, but, given the circumstances, they will produce only troublesome results. Priests will avoid this inconvenience and this misfortune if, before acting and in action, they take care to conform to the established order and the rules of discipline. Now, ecclesiastical discipline requires the union between the various members of the hierarchy, the respect and obedience of the lower to the higher. As We said recently in Our letters to the Archbishop of Tours: "The edifice of the Church, of which God Himself is the Architect, rests on a very visible foundation, first on the authority of Peter and his Successors, but also on the Apostles, and on the Successors of the Apostles, who are the Bishops; so that to listen to their voice or to despise it, is equivalent to listening to or despising Jesus Christ Himself" (2). Therefore, listen to the words addressed by the great martyr of Antioch, St. Ignatius, to the clergy of the early Church: "Let everyone obey the bishop as Jesus Christ obeyed his Father. Do nothing for the service of the Church outside of your bishop, and just as Our Lord did nothing except in close union with his Father, (1) *Importabilis siquidem absque scientia est zelus.... Quo igitur zelus fervidior ac vehementior spiritus, profusiorque charitas, eo vigilantiori opus scientia est quae zelum supprimat, spiritum temperet, ordinet charitatem. Tolle hanc (discretionem) et virtus vitium erit, ipsaque affectio naturalis in perturbationem magis convertetur exterminiumque naturae (S. Bern. Serm. XLIX in Cant. n. 5).* (2) *Divinum quippe aedificium, quod est Ecclesia, verissime nititur in fundamento conspicuo, primum quidem in Petro et Successoribus eius, proxime in Apostolis et Successoribus eorum, Episcopis, quos, qui audit vel spernit, is perinde facit ac si audiat vel spernat Christum Dominum (Epist, ad Arch. Turon.).*

[*Latin ed. p. 206*]

206 ENCYCLICAL LETTER: "You, priests, do nothing without your Bishop. May all the 'members of the presbyterial body' be united to him, just as 'all the strings of the instrument are united to the harp' (1). If, on the contrary, you, as priests, acted outside of this submission and union with your Bishops, We would repeat to you what Our predecessor Gregory XVI said, namely, that, "as far as it depends on your power, you utterly destroy the order established with such wise foresight by God, the Author of the Church" (2). Remember also, Our dear sons, that the Church is rightly compared to an army arrayed in battle, *sicut castrorum acies ordinata* (3), because it has the mission of fighting against the visible and invisible enemies of God and of souls. Therefore, St. Paul recommended

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to Timothy that he behave "as a good soldier of Christ Jesus" (4). Now, what makes an army strong and contributes most to victory is discipline, the exact and rigorous obedience of all to those who are charged with command. It is here that impetuous and indiscreet zeal can easily become the cause of true disasters. Recall one of the most memorable events in sacred history. Surely, they lacked neither courage, nor good will, nor devotion to the sacred cause of religion, these priests who gathered around Judas Maccabaeus to fight with him against the enemies of the true God, the profaners of the temple, and the oppressors of their nation. However, having wished to free themselves from the rules of discipline, they rashly engaged in a battle in which they were defeated. The Holy Spirit tells us about them "that they were not of the race of those who could save Israel." ->• Why? Because they had wished to obey only their own inspirations and had rushed forward without...

(1) *Omnes episcopum sequimini ut Christus Iesus Patrem. Sine episcopo nemo quidquam faciat eorum quae ad Ecclesiam spectant* (St. Ignatius of Antioch, *Epistle to the Smyrneans*, 8). "Just as the Lord did nothing without the Father, so you also should do nothing without the bishop" (ibid., *Epistle to the Magnesians*, 7). "May your presbyterate be so united to the Bishop that it is like the strings of a harp" (ibid., *Epistle to the Ephesians*, 4).

(2) "As far as it depends on your power, you utterly destroy the order established with such wise foresight by God, the Author of the Church" (Gregory XVI, Encyclical Letter, August 15, 1832).

(3) Canticles 6:3.

(4) 2 Timothy 2:3.

[*Latin ed. p. 207*]

ENCYCLICAL LETTER 207, awaiting the orders of their superiors. On that day, the priests fell in battle, while striving valiantly, because they went into battle without counsel. But they were not of the seed of those men through whom salvation was accomplished in Israel (1). In this regard, our enemies can serve as an example to us. They know very well that unity makes strength, "vis unita fortior"; therefore, they do not fail to unite closely, whenever it is a matter of fighting against the holy Church of Jesus Christ. Therefore, our dear sons, as is certainly the case with you, if you desire that, in the formidable struggle engaged against the Church by the anti-Christian sects and by the city of the devil, victory remain with God and with His Church, it is absolutely necessary that you all fight together, in great order and with exact discipline, under the command of your hierarchical superiors. Do not listen to these harmful men who, while claiming to be Christians and Catholics, sow discord in the Lord's field and sow division in His Church by attacking, and often even by calumniating, the Bishops, "established by the Holy Spirit to govern the Church of God"

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(2). Do not read their pamphlets, nor their newspapers. A good priest must in no way allow either their ideas, nor the licentiousness of their language. How could he ever forget that, on the day of his ordination, he solemnly promised to his Bishop, before the holy altars, "obedience and reverence"? Above all, our dear sons, remember that the indispensable condition of true priestly zeal, and the best guarantee of success in the works to which hierarchical obedience dedicates you, is the purity and holiness of life. "Jesus began by doing, before teaching" (3). As He did, so too must the priest, by the preaching of example, precede the preaching of the word. "Separated from the world and its affairs," (say the Fathers of the Holy Council of Trent), "clergy have been placed in a position that sets them apart, and the faithful look to their lives as a mirror, to know what they should imitate. This is why clergy, and all those whom God has especially called to His service, must (1) 1 Maccabees V, 67, 62. (2) Acts XX, 28. (3) Acts I, 1.

[*Latin ed. p. 208*]

208 "That their actions and manners may be so regulated that in their very being, their movements, their gestures, their words, and all other details of their life, there may be nothing that is not grave, modest, and deeply imbued with religion. They will carefully avoid faults that, though minor in others, would be very serious for them, so that not a single one of their actions fails to inspire respect in all" (1). To these recommendations of the Holy Council, which We desire, Our dear Sons, to impress upon all your hearts, would certainly be lacking those priests who, in their sermons, adopt a language ill-suited to the dignity of their priesthood and the sanctity of the Word of God; who attend popular gatherings where their presence serves only to excite the passions of the impious and enemies of the Church, and expose themselves to the most vulgar insults, to no one's benefit and to the great astonishment, if not scandal, of the faithful; who adopt the habits, manners, and ways of acting, and the spirit of secular people. Surely, salt must be mixed with the mass it is meant to preserve from corruption, while also defending itself against it, lest it lose all its flavor and become good for nothing, except to be thrown out and trampled underfoot (2). Likewise, the priest, salt of the earth in his necessary contact with the society that surrounds him, must maintain modesty, gravity, and sanctity in his demeanor, his actions, and his words, and must not allow himself to be overwhelmed by the frivolity, dissipation, and vanity of worldly people. Rather, he must maintain his soul so united to God, that he loses nothing of the spirit of his holy state and is not compelled, before God and before his own conscience, to make this sad and humiliating confession: "Whenever I have been among the laity, I have returned less a priest."

(1) "For since they are raised to a higher place among worldly affairs, all eyes are cast upon them as if in a mirror, and from them, others take what

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they will imitate. Therefore, it is entirely fitting that those clerics called by the Lord should arrange their lives and manners in such a way that in their bearing, gestures, gait, speech, and in all other things, they present nothing but what is grave, moderate, and full of religion; that they avoid even minor faults, which would be the greatest in them, so that their actions may inspire reverence in all" (Holy Council of Trent, Session XXII, on Reform, chapter 1).

(2) Matthew 5:13.

[*Latin ed. p. 209*]

ENCYCLICAL LETTER 209 Would it not be because, through presumptuous zeal, certain priests have set aside those traditional rules of priestly discretion, modesty, and prudence, deeming them antiquated and incompatible with the needs of the ministry in our time, the principles of discipline and conduct that they received from their masters in the seminary? They are seen to rush, as it were instinctively, towards innovations, the most dangerous in language, appearance, and relationships. Many, alas! rashly embarking on slippery slopes, where they lacked the strength to restrain themselves, have scorned the charitable warnings of their superiors or of older and more experienced colleagues, and have arrived at apostasies that have rejoiced the enemies of the Church and caused bitter tears to be shed by their Bishops, their brothers in the priesthood, and the faithful. St. Augustine tells us: "The more one walks with force and speed when outside the right path, the more one 'strays'" (1). Certainly, there are advantageous novelties, proper to advance the Kingdom of God in souls and in society. But, as the holy Gospel says (2), it belongs to the head of the household, and not to the children or servants, to examine them, and, if he deems it fitting, to grant them citizenship, alongside the ancient and venerable customs that comprise the other part of his treasure. When recently We fulfilled the apostolic duty of warning Catholics of North America against innovations that, among other things, sought to substitute for the principles of perfection established by the teaching of doctors and the practice of the saints, maxims or rules of moral life more or less imbued with that naturalism which, in these days, tends to penetrate everywhere, We proclaimed with great emphasis that, far from rejecting and dismissing outright the progress made in these present times, We were very willing to welcome all that can increase the patrimony of science or further generalize the conditions of public prosperity. But We took care to add that these pro- (1) *Enarr. in Ps. XXXI, n. 4.* (2) *Matt. XIII, 52.* *Acta, Tom. XXXII. fase. CCCLXXVI. 14*

[*Latin ed. p. 210*]

210 ENCYCLICAL LETTER: The efforts of men, however ingenious, cannot effectively serve the cause of good if the wise authority of the Church

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is set aside (1). In concluding these letters, We desire to apply to the clergy of France what We once wrote to the priests of Our diocese of Perugia. We reproduce here a portion of the pastoral letter that We addressed to them on July 19, 1866. "We ask the clergy of our diocese to "seriously reflect on their sublime obligations, on the difficult circumstances that we are experiencing, and to ensure that their conduct is in harmony with their duties and always conforms to the rules of enlightened and prudent zeal. Thus, even those who are our enemies will seek in vain for grounds for reproach and blame: *qui ex adverso est, vereatur nihil habens malum dicere de nobis* (2)." "Although difficulties and perils multiply from day to day, the pious and fervent priest must not, for this reason, become discouraged, nor must he abandon his duties, nor even cease in the fulfillment of the spiritual mission that he has received for the good, for the salvation of humanity, and for the maintenance of this august religion, of which he is the heir and minister. For it is especially in difficulties, in trials, that his virtue is affirmed and strengthened; it is in the greatest misfortunes, in the midst of political transformations and social upheavals, that the beneficial and civilizing action of his ministry is manifested with greater brilliance." "Turning to practice, we find a teaching perfectly suited to the circumstances in the four maxims that the great Apostle St. Paul gave to his disciple Titus. In all things, give a good example by your works, by your doctrine, by the integrity of your life, by the gravity of your conduct, using only..."

(1) *Abest profecto a Nobis ut quaecumque horum temporum ingenium parit, omnia repudiemus. Quin potius quidquid indagando veri aut enitendo boni attingitur, ad patrimonium doctrinae augendum publicaeque prosperitatis fines proferendos, libentibus sane Nobis accedit. Id tamen omne, ne solidae utilitatis sit expers, esse ac vigere nequaquam debet Ecclesiae auctoritate sapientiaque posthabita* (Epist. ad S. R. E. Presbyt. Card. Gibbons Archiep. Baltimor., die 22 Ian. 1899).

(2) Titus II, 8.

[*Latin ed. p. 211*]

ENCYCLICAL LETTER 211 "holy and irreproachable words" (1). We desire that "each member of our clergy meditate on these maxims and conform his conduct to them." "In all things, give an example of good works," that is, of a life exemplary and active, animated by a true spirit of charity and guided by the precepts of evangelical prudence; of a life of sacrifice and labor, dedicated to doing good to one's neighbor, not for earthly purposes and for a perishable reward, but for a supernatural end. Give the example of this language, at once simple, noble, and elevated; of this healthy and irreproachable word, which confounds all human opposition, appeases the ancient hatred that the world has shown us, and gains us the respect, even the esteem, of the enemies of religion. Whoever is devoted to the service of the sanctuary has always been obligated to be a living model, a perfect

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example of all virtues; but this obligation is much greater when, as a result of social upheavals, one treads on difficult and uncertain ground, where one may find at every step pitfalls and pretexts for attack...

...In doctrine. In the face of the combined efforts of incredulity and heresy to bring about the ruin of the Catholic faith, it would be a true crime for the clergy to remain hesitant and inactive. In the midst of such a great outpouring of errors, such a conflict of opinions, it cannot fail in its mission, which is to defend the attacked dogma, the perverted morality, and justice, so often disregarded. It is incumbent upon it to oppose, as a barrier, the encroaching error and the heresy that hides itself; it is incumbent upon it to watch the actions of the instigators of impiety who attack the faith and the honor of this Catholic land; it is incumbent upon it to expose their deceptions and to reveal their snares; it is incumbent upon it to protect the simple, to strengthen the timid, to open the eyes of the blind. Superficial erudition, a vulgar science, are not sufficient for this: solid, profound, and continuous studies are needed; in a word, a whole body of knowledge.

(1) *In omnibus teipsum praebe exemplum bonorum operum, in doctrina, in integritate, in gravitate, verbum sanum, irreprehensibile.* (Titus II, 7-8).

[*Latin ed. p. 212*]

212 ENCYCLICAL LETTER: "Concerning doctrinal principles capable of combating the subtlety and the 'singular cunning of our modern opponents...' ... "In integrity. Nothing more strongly demonstrates the importance of this 'counsel' than the sad experience of what occurs around us. Do we not see that the lax life of certain ecclesiastics discredits and brings into contempt their ministry, and occasions scandals? If men, endowed with a mind so brilliant and remarkable, sometimes desert the ranks of the holy militia and rise up against the Church, that Mother who, in her affectionate tenderness, had entrusted them with the governance and the salvation of souls, their defection and their errors are often due to nothing more than their indiscipline, or their bad habits... "In gravity. By gravity, we must understand that serious conduct, full of judgment and tact, which should be proper to the faithful and prudent minister whom God has chosen for the governance of His family. This one, indeed, while thanking God for having deigned to raise him to this honor, must be faithful to all his obligations, at the same time being measured and prudent in all his actions; he must not allow himself to be dominated by base passions, nor be carried away by violent and excessive words; he must sympathize with kindness for the misfortunes and weaknesses of others, do to each person all the good he can, in a disinterested manner, without ostentation, always maintaining intact the honor of his character and his sublime dignity." We now return to you, Our beloved sons of the French clergy, and We have the

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firm confidence that Our prescriptions and Our counsels, solely inspired by Our paternal affection, will be understood and received by you, according to the meaning and scope that We have intended to give them in addressing these Letters to you. We expect much from you; because God has richly endowed you with all the gifts and all the qualities necessary to accomplish great and holy things to the advantage of the Church and of society. We desire that not one of you should allow himself to be affected by those imperfections which diminish the splendor of the sacerdotal character and harm its effectiveness.

[*Latin ed. p. 213*]

The present times are sad; the future is even darker and more threatening; it seems to herald the approach of a formidable crisis of social upheaval. Therefore, as We have said on various occasions, it is necessary that we uphold the salutary principles of religion, as well as those of justice, charity, respect, and duty. It is incumbent upon us to deeply impress these principles upon the minds, especially those that are held captive by incredulity or agitated by grievous passions, to let the grace and peace of our divine Redeemer, who is the Light, the Resurrection, and the Life, prevail, and to unite all men in Him, despite the inevitable social distinctions that separate them. Yes, more than ever, the days in which we live demand the cooperation and dedication of exemplary priests, full of faith, discretion, and zeal, who, inspired by the gentleness and strength of Jesus Christ, of whom they are the true ambassadors, *fungimur pro Christo legatione* (1), announce with courageous and unwavering patience the eternal truths, which are for souls the fertile seeds of virtues. Their ministry will be laborious; often even painful, especially in countries where the populations, absorbed by earthly interests, live in forgetfulness of God and His holy religion. But the enlightened, charitable, and tireless action of the priest, strengthened by divine grace, will work incredible wonders of resurrection, as it has done in all times. We greet this consoling prospect with all Our wishes and with ineffable joy, and, with all the affection of Our heart, We grant to you, Venerable Brothers, to the clergy, and to all Catholics of France, the Apostolic Blessing. Given at Rome, near Saint Peter, on the 8th of September, in the twenty-second year of Our Pontificate. LEO PP. XIII.

(1) II Corinthians V, 20.

[*Latin ed. p. 214*]

214 LETTER OF HIS HOLINESS, POPE LEO XIII, TO THE ARCHBISHOPS AND BISHOPS OF THE ORDINARIATE OF BRAZIL.

Most Reverend Brothers, Greetings and Apostolic Benediction. We are greatly pleased to learn that a most significant fruit has been reaped in your land, largely through your own efforts, Most Reverend Brothers. Following the Apostolic Letters which We issued on the second day of July in the

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year 1894, through your study and labor, piety has been awakened in the people, and the ancient discipline has been revived among the men of the sacred order. Moreover, We are not unaware of the efforts you have made to safeguard the well-being and rights of the religious confraternities which have survived from the ancient families of this region, and to restore them to the original splendor of their institution; to which are now associated other brothers from Europe, whose noble zeal has not been delayed by the length of the journey, nor by the harshness of the weather, nor by any hidden obstacles. Furthermore, recently established congregations have been added, and several of them, drawn together by your concordant efforts, are dedicated to either the formation or the guidance of young men, or to the performance of sacred missions, or to other duties in the priestly ministry, to which the number of priests in this region would be far from sufficient. Finally, the seminaries among you, whether increased in number or restored to a better condition, also offer a cause for comfort. These auspicious beginnings and the progress made thus far give hope that, in the near future, the sacred hierarchy, which We have established here, will respond with ever greater growth. Indeed, given the proven industry and evident diligence of you, Most Reverend Brothers, and also the piety, character, and customs of the Brazilian people, this seems quite likely.

However, there are certain things that are so necessary for the progress of the Catholic cause that, once touched upon, they should not be considered sufficient; they should be frequently recalled and recommended. In particular, attention must be given to the seminaries, for their condition is closely linked to the fortune of the Church. Therefore, it is most important to restore their discipline, as some of your most Reverend predecessors have already done with success, by having students who aspire to dedicate themselves to God through the sacred orders live in separate buildings, with their own institutions and laws, and by retaining the name "seminary" for their houses; while those institutions dedicated to forming young men for civil duties should be called "convents" or "episcopal colleges." For it is evident from daily experience that mixed seminaries are less conducive to the counsel and providence of the Church; such associations are less compatible with laymen.

[*Latin ed. p. 215*]

LETTER 215: Concerning the reasons why clerics are often diverted from their sacred vocation. These [clerics] ought, from a young age, to be accustomed to the yoke of the Lord, to dedicate themselves greatly to piety, and to conform their lives to the example of the sacred ministry. Therefore, they should be protected from dangers early on, separated from worldly influences, and educated according to the most salutary laws established by the most holy Charles Borromeo, as we see happening in the principal seminaries of Europe. The same reasoning that advises against exposing

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students to the countryside also suggests that they should not be allowed to visit their families at will. For many examples of vice remain, especially in those rural homes where the families of workers are gathered; this leads to the fact that, prone to youthful desires, they are either discouraged from their vocation or become future priests who are offensive to the people. We commend this matter, which has already been successfully attempted by some bishops, and we urge you, Venerable Brothers, to consider such a law for the protection of young clerics in the future. Furthermore, as we have already indicated, it is essential that work be devoted, diligently and prudently, to writing and disseminating Catholic newspapers. For, in our age, the common people draw their opinions from no source other than these daily readings, and form their morals accordingly. Meanwhile, it is distressing to see these weapons [newspapers] placed in the hands of good people, which, when handled by the wicked, prepare the most miserable ruin for the faith and morals. Therefore, the pen must be sharpened, and the art of writing cultivated, so that truth may overcome falsehood, and that minds, prejudiced by error, may gradually submit to the incorrupt voice of reason and justice. Closely related to this is another benefit, which derives from the increase of Catholics in public life and their inclusion in assemblies that make laws. For the best causes can be advanced as much by speech as by writing, and by grace and authority as much as by words. It also seems opportune to sometimes include men of the sacred order in these assemblies; indeed, it is perfectly permissible for them to defend the rights of the Church with such safeguards and as if they were watchmen of religion. But it must be carefully avoided that there be so much contention in these matters, that they appear to be driven more by miserable ambition or by blind devotion to factions, than by concern for the Catholic cause. For what is more deplorable than to see sacred ministers fighting among themselves, so that, through their influence in public affairs, they introduce a most pernicious evil into the state, namely sedition and discord?

[*Latin ed. p. 216*]

216 LETTER. If those who are rushing into harmful schemes are perpetually opposed to established authority? All these things cause great offense to the people and create much envy towards the clergy. Therefore, the right to suffrage should be used with moderation; all suspicion of subversion should be avoided; public duties should be undertaken prudently; and obedience to the highest authority should never be abandoned. Again, Venerable Brothers, I urge you to employ those means by which the Christian good may be suitably promoted among you. And may your excellent intentions not be thwarted by a lack of resources, nor may the best plans be hindered by financial constraints. For, as before, expenses are not provided from the public treasury, either for you, or for the Canonries, or for the Seminaries, or for the Curias, or for the construction of churches. Almost the only thing

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that remains is the goodwill of the people. Nevertheless, in this matter, a great hope is offered by the custom of the Brazilian people, who, by the nobility of their spirit, are most ready to make generous donations, especially those that contribute to the good of the Church. And indeed, I have already mentioned this in my previous letters, when I said that, concerning the endowment of new dioceses, which are most in need, I had nothing to prescribe; that I had sufficient confidence in the piety and religion of the Brazilian people, that they would not fail the bishops. And I would gladly offer this as an example, were your nation not abundant in domestic examples and those most splendid achievements, by which the sons of northern America provide for their bishops, and for Catholic colleges, schools, and other pious institutions, with certain and ample support. Let it not be forgotten how your ancestors have built conspicuous temples, how they have endowed monasteries, and what great monuments of Christian piety and beneficence they have left to you. However, there are many ways to help the Church in its needs. We suggest that in each diocese, a fund be established, to which the faithful may contribute an annual sum, to be collected by chosen men and women of noble character, under the direction and guidance of the Curia. It is fitting that these individuals should be foremost in giving; which they will best accomplish if they contribute something from their certain incomes, which they often enjoy in abundance, and if they impose some financial obligation upon themselves, as a kind of tax, in addition to uncertain revenues. Furthermore, the assistance of bishops in times of need can be...

[*Latin ed. p. 217*]

TO those who govern monasteries and pious societies, and to those for whom the matter is of greater concern: It has been considered beneficial to the public good that a considerable sum of money be allocated from the diocesan funds, which is usually spent by some of the aforementioned societies on profane spectacles. — Finally, if anyone, endowed with greater worldly goods than others, wishes to follow a more commendable example and, by will or otherwise, intends to benefit pious societies or other groups dedicated to works of charity, we earnestly urge them to remember to bequeath a certain sum of money to the bishops, so that these may be able to support both the Church and their own dignity. We need your support, Venerable Brothers. We ourselves, whom the ravages of time compel to request the stipend of Peter, implore you. Moreover, let the thought of placing your trust in God first arise within you, for He Himself is concerned for us (1); and let the words of the Apostles resonate in your hearts: He who sows the seed of the sower, and provides bread for those who eat, will multiply your seed, and increase the fruits of your justice (2). Furthermore, let the clergy and the people, whom the Holy Spirit has placed under your care as bishops, recall the former generosity of the faithful, whose hearts

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were united and of one mind (3); who were more concerned about the holy society of the Church than about their own possessions, and who brought the price of what they sold and laid it at the feet of the Apostles (4). Let them remember the words of Paul, with which we urge them to the utmost: And we beseech you, brethren, to know them who labour among you and are over you in the Lord and admonish you (5), that you may have them in high esteem and love, because of their work. In the meantime, as a pledge of heavenly blessings and a witness to Our benevolence, We impart to you, Venerable Brothers, and to your clergy and people, Our Apostolic blessing in the Lord. Given at Rome, near St. Peter's, on the 18th of September, in the year 1899, in the twenty-second year of Our pontificate. LEO XIII.

(1) 1 Peter 5:7.

(2) 2 Corinthians 9:10.

(3) Acts 4:32.

(4) Acts 4:34-35.

(5) 1 Thessalonians 5:12-13.

[*Latin ed. p. 218*]

218 FROM THE HOLY CONGREGATION OF THE COUNCIL OF ISOLA, CONCERNING MARRIAGE, dated September 9, 1899. Session 24, chapter 1, Concerning Annulments. SUMMARY OF THE CASE. In the year 1881, in the month of July, on the 19th day, Iosepha, in the parish of Serravia, in the diocese of Isola, after the civil formalities, validly entered into marriage with Aloysius, who was of the same age. However, this marriage, freely entered into by both parties, and after the betrothed had courted each other with mutual affection for almost fourteen years, did not have a happy outcome. For, as it is narrated, after the solemn wedding ceremonies were completed, the husband went to his home in the territory of Forgii, in the same diocese; and there, on the very first night of the marriage, they used the same bed and attempted to consummate the marriage; but in vain, for the husband was found to be less than suitable for the conjugal act. Nevertheless, Iosepha lived with her husband for fifteen months without interruption; but when she was threatened and beaten by him, who claimed to be affected by the wife's faults and rendered incapable of marriage, she returned to her parents' home in Serravia. Meanwhile, at the husband's insistence, some reconciliation was attempted between the spouses; but Iosepha was again grievously mistreated, and finally, she was forced to leave her husband, never to return. Furthermore, when her mother died, Iosepha, in order not to live alone and in poverty, applied to the Civil Tribunal of Naples and requested that her marriage with Aloysius be declared null, due to the husband's impotence; and indeed, the lay judge, considering Aloysius' absolute and permanent inability to have intercourse, which stemmed from an original

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neurasthenia, and considering Iosepha's integrity of body or virginity, as evidenced by the sworn testimony of three experts,

[*Latin ed. p. 219*]

ISOLANA 219: It is stated that, after inspection and deposition, on December 11, 1896, a judgment of nullity of marriage was rendered in favor of the woman. Against this judgment, the man filed an appeal, but the Tribunal rejected his appeal and fully confirmed the judgment. Soon after, Iosepha, being forty-seven years of age, desiring not to live a life of prolonged sadness, and wishing to have this marriage resolved before the Church, sent a petition to the Most Holy Prince, imploring him to either declare this marriage null and void due to the man's impotence, or, if that were not possible, to grant a dispensation regarding the consummated but not fully consummated marriage. Upon receiving this petition, a decree was issued from the Isclana Curia, instructing that this process be completed both regarding the alleged nullity and regarding the lack of consummation. Indeed, the Isclana Curia, through a delegated judge, initiated the process, first examining the woman and her seven witnesses, who gave the most excellent testimony regarding her piety and truthfulness. The same woman was subjected to a medical examination, which was carried out by three midwives and five physicians; and all concluded regarding the integrity of the woman and the lack of consummation of the marriage. The man was also summoned to the cause and stated that it was true that the marriage had not been consummated; but he said that this was to be repeated, not due to his impotence, but rather due to the woman's resistance; although he did not exclude some inertness of a certain member with which he suffered. Then, being summoned again to present seven witnesses and to undergo a medical examination, he excused himself with futile reasons through a letter; wherefore, after three warnings, the judge declared him contumacious. With all of this completed, the Isclana Bishop, transmitting the acts to the S. C., considered the following to be noteworthy: "From this process, the integrity of the woman Iosepha appears to be invincibly proven, and certain external arguments appear (such as alienation of affections between the spouses, quarrels, dissensions, etc.), which I believe could favor the requested dissolution of the marriage."

[*Latin ed. p. 220*]

220. SYNOPTIC DISCUSSION FROM THE SACRED OFFICE. OPINION OF A CANONIST. Having been assigned to this case by the Sacred Office, and having been charged with examining it, the following points appear to me to be relevant, both with regard to the proceedings and with regard to the merits of the case. Regarding the proceedings: The proceedings were conducted properly, in accordance with common law and, in particular, in accordance with the Benedictine Constitution *Dei Miseratione* and the

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Instruction of the Sacred Congregation of the Council, 1840. However, it can be observed that the witnesses cited by the man were not, by duty, those closest to him, nor even others, such as the man's brother, about whom the woman stated: "Once, I was threatened by his brother, Giuseppe, because he believed that I had bewitched my husband." This is a significant distinction between matrimonial cases and other cases, especially civil ones, because the former must be decided, above all, according to the truth of the matter, for the sake of the sacrament and the salvation of souls; therefore, according to the Instruction of the Sacred Congregation of the Council, 1840, "if the defender of the marriage also discovers, from the proceedings already completed, that there are other witnesses informed about the matter, he will also cite them and subject them to examination." Among the witnesses, one does not find, except in a few close relatives and servants, knowledge, but rather inside information, since "what is done in the domestic sphere is not so readily apparent to everyone, nor can it be easily verified by others than by those within the household." *Rota in decis. 155, part. 6, de Recent.*; cf. also *c. Veniens 38, § final, de testibus cum glossa, etc., etc.* Regarding the merits of the case: Since the man has refused to submit to an examination, it is no longer possible to insist on the doubt regarding the nullity of the marriage; therefore, the only doubt that remains to be examined is whether, in other words, it is necessary to consult with the Most Reverend [authorities], etc., etc. Indeed, there are grounds for a dispensation, and they are serious: namely, 1) mutual aversion and, consequently, impossibility of reconciliation. The man states: "I do not believe that reconciliation or cohabitation is possible, because my wife is..."

[*Latin ed. p. 221*]

ISOLANA 22 also appealed to the Tribunal of Naples to have me declared impotent... therefore, if we were to meet, it would be the same as starting the past scenes all over again, with even more tragic consequences; and the same reason is given by the Bishop in a letter dated July 7, 1897: the desire of the woman, who is orphaned by her parents and relatives and is now 47 years old, "to consult her conscience and to provide for the necessities of her life," as she states in her pitiful letter sent to the Supreme Pontiff; finally, the very probable impotence of the man. The consummation is proven, both by the examination of the woman and by moral arguments. Regarding the examination: three midwives and five doctors unanimously proclaim the lack of consummation. Thus, Doctor Cuzzogrea concludes his sworn report: "based on what has been reported to me by the aforementioned midwives, all three of whom were in agreement in giving their judgment, and based on the accurate observations made regarding what they have reported anatomically, I can assure with a clear conscience that the Lady Giuseppa is still in the state of virginity, and her hymen

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is anatomically intact and without presenting any alterations, anomalies, or imperfections of any kind"; and Doctor Di Meglio says: "although the midwives... were not very intelligent and did not recommend themselves for their limited anatomical knowledge, nevertheless, the uniformity of the concept and the pleasant surprise of encountering a perfectly virgin woman... leads me to believe that Giuseppa has been the victim of the most bitter deception." However, this argument gains greater force if it is considered that the examination was carried out most rigorously according to the law. After a preliminary bath, the midwives were individually instructed by the doctors, the examination was made separately by them, and the midwives and doctors were examined by the Tribunal, who in writing and verbally confirmed what the midwives had reported. Furthermore, the conclusions of the midwives and doctors were presented before

[*Latin ed. p. 222*]

222. From the Sacred Council, a tribunal of the Church confirms the conclusions reached before a civil tribunal regarding the declaration of nullity of the marriage, based on the testimony of three physicians, in whose report the following is read: "The labia majora were widely separated... a perfectly circular, intact hymen was observed, with a very slight scar at the top and to the left. This hymen appears to be entirely physiological, membranous..." Since an intact hymen was found, the slightest scars discovered are of no importance; therefore, the physicians conclude regarding the woman's virginity: "We observed the genitals; the hymen, always intact, membranous and circular, was there to attest to her virginity." Regarding the moral argument, both spouses testified under oath that the marriage was not consummated. The woman stated: "I am absolutely certain that he never consummated the marriage," and the man stated: "I am absolutely certain that the marriage was not consummated." These confessions are corroborated by the testimony of seven witnesses on the woman's side; and on the part of both, and especially the man, by other supporting evidence and presumptions. Seven witnesses, all of whom are neighbors, and three of whom are related to the woman, testify under oath that the woman is a religious, honest person, and entirely worthy of belief. The same is repeated by other witnesses. To the testimonies of the seven witnesses, the testimonies of five witnesses of knowledge are added, including one priest, another municipal secretary, a third physician, etc.; and all testify that it is a common opinion that the marriage was not consummated. Although there is no testimony of seven witnesses on the part of the man, there are other presumptions and supporting evidence that corroborate the testimonies not only of the man but also of the woman. Indeed, the confession of non-consummation on the part of the man is, in a certain sense, a disadvantage to him, for it is a kind of confession of his own impotence, although the

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man strives with all his might.

[*Latin ed. p. 223*]

ISOLANA 223: To repel [the claim] from himself, and to attribute the cause of the lack of consummation to the woman's malice. It is very likely proven that the man is impotent, both from the man's own confession, and from the judgment of the civil tribunal, which declared that no civil marriage had been contracted by Aloysius with Iosepha, on the grounds of the man's impotence. When questioned by the judge: "Have you, on the same subject of consummation... consulted doctors or experts...?" he replied: "I have not consulted any doctors or experts, except for one Salvatore Rinaldi of Lacco Ameno, who also came to my house to try to persuade my wife to unite with me in the marital act, and at the same time administered to me some drink and also some anointing of oil, saying that my wife had bewitched me, and therefore he gave me both drinks and remedies for the kidneys and chest, so that I might free myself." From this confession, it is clear that the man admits to his impotence, although he attributes it rather to a malevolent influence than to a natural cause. Regarding the judgment of the civil tribunal, it is reported in the woman's petition: "Considering the absolute impotence of Luigi, that is, perpetual, manifest, and prior to the marriage, deriving from an original neurasthenia due to the weakness of the spinal and cerebral centers, and considering the physical integrity of Giuseppa, that is, the existence of virginity, etc., according to the inspection and sworn testimony of three medical experts, professors of the University of Naples, it declared the marriage between Luigi and Giuseppa to be null... and ordered that, as it was declared null, it be noted and cancelled at the Office of Civil Status of Serrara Fontana." In understanding this judgment, it must be observed that Italian civil marriage law, although based on French law, differs in that it does not explicitly admit impotence as an impediment (Eschbach, *Disputationes Physiologiae theologicae...*, disp. I, c. 8, a. III; Ballerini - Palmieri, *Opus Theologicum*, Vol. VI).

[*Latin ed. p. 224*]

(FROM THE SACRED COUNCIL, 224, n. 1298), it admits this impediment, and indeed explicitly, under certain conditions which are set forth in article 107: "Manifest and perpetual impotence, when it existed prior to the marriage, can be presented as a cause for the nullity of the marriage." Interpreters dispute, especially concerning the meaning of the condition of 'manifest,' which many interpret most broadly (cf. Ziino, *Compendium of Legal Medicine*, book 3, chapter 1, § 172), as in our case, where, although experts agree that they found nothing abnormal in the conformation of the man's body, or, as they themselves say, with respect to the somatic aspect, they nevertheless found a defect with respect to the psychological aspect. Indeed, although it may perhaps have been difficult to prove the existence

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of the impediment of impotence, at least in relation to the body, especially considering that "Interpreters of the law teach that, rather than from the external appearance of the body, the proof of the impediment should be sought in the experience of the conjugal act" (Cosci, *De Separatiis*, book 3, chapter 2, n. 298 et seq.; Naples, April 24, 1858), nevertheless, since the man refused to submit to an examination in the ecclesiastical process, nothing certain can be decided regarding the impediment of impotence; however, the aforementioned sentence gives rise to a strong presumption of this impediment. After these things, in order to answer the question posed, it seems to me that the answer should be: Affirmative, but the man is forbidden to enter into another marriage without the consultation of the Sacred Congregation. The reason for this clause is evident from what has been said.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE.

Joseph and Aloysius were married in July of the year 1881, each being over thirty years of age. At first, mutual love reigned between the newlyweds, but soon disputes disturbed the peace, and a year after the marriage, conjugal life was disrupted. This is affirmed by witnesses and by Joseph herself. In the meantime, in the year 1896, Joseph obtained from a civil court a declaration that she was a virgin and that Aloysius was impotent.

[*Latin ed. p. 225*]

Isolana would recognize the labor of one who seeks to depart, and would break the civil bond between herself and Aloysius. But, among the acts, an anonymous letter dated January 20, 1899, addressed to Isclae was found, in which both the physical virginity of Iosepha and the impotence of Aloysius are mentioned as fabrications. Indeed, I know that anonymous letters prove nothing of themselves; but when they indicate evidence, they certainly deserve to be considered. Given these circumstances, I consider it uncivil to dispute the controversy without first hearing from the local parish priest, speaking in the vernacular language of "Serrara," and from the priest Leonardo d'Abecudo, and without presenting the text of the aforementioned contract, of which the Priest here speaks. Therefore, so that I may not waste your time, Most Reverend Fathers, I humbly request that you address the aforementioned matters without delay, and write back: "The acts of the process are to be extended and completed." With these observations, the following questions have been proposed to be clarified: I. Does it pertain to the nullity of the marriage in this case? And, negatively. II. Is it necessary to consult with the Most Holy Congregation regarding a dispensation for a marriage that is valid but not consummated in this case? RESOLUTION. After deliberation by the Sacred Congregation on September 9, 1899, it was decided to respond: To I: This will be addressed in

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the second instance. To II: Affirmative, the man is forbidden from entering into another marriage without the consultation of this Holy Congregation. Acts. Vol. XXXII. Page CCCLXXVI. 15.

[*Latin ed. p. 226*]

226 FROM THE DECREE OF THE HOLY CONGREGATION FOR INDULGENCES. To the Most Reverend Ordinaries of the places, concerning the granting of Indulgences pertaining to the Most Holy Rosary. In Rome. In that document, which the Most Holy Pope Leo XIII issued last year concerning the Marian sodalities, the following were decreed, among other things: "The Superiors General of the Order of Preachers, with due care and diligence, shall, as soon as possible, prepare a list of all the Indulgences granted by the Roman Pontiffs to the Sodality of the Most Holy Rosary and to other faithful who devoutly recite it, a list to be prepared by the Holy Congregation for Indulgences and Sacred Relics and confirmed by Apostolic authority." Therefore, since this was commanded, it has now been ordered to be carried out; and to me, with great gratitude, it has been entrusted by the Most Reverend Father, to send to all Bishops and others to whom it pertains, the aforementioned list, carefully prepared and approved by His Supreme Authority. While I obey the will of the Most Holy Lord, I do not doubt that Your Eminence will marvel at this constancy, and will not consider it to be without the inspiration of God, by which the Supreme Pontiff, for many years, encourages all the faithful to turn to the Most Holy Mother of God through the practice of the Rosary. On the first of January of the year 1883, in Encyclical Letters, recalling the benefits conferred upon the Christian name through the prayers of the Most Holy Rosary, he declared that he had been led to a firm hope that this same method of prayer would be beneficial, even in these difficult times for the Church, against the force of errors widely spreading, and against the corruption of morals and the attacks of powerful adversaries. Therefore, adding the rewards of Indulgences, he decreed that the Most Holy Mother of God should be venerated throughout the entire month of October by Catholics everywhere, through the practice of the Rosary. From that time on, the Blessed Father has almost every year urged the Christian people to strengthen their devotion through the custom of the Rosary.

[*Latin ed. p. 227*]

From the Sacred Congregation for Indulgences, 227, to maintain the patronage of the Church. Moreover, to increase the devotion of the faithful, he illuminated, through letters which he granted, the dignity of the Holy Rosary; either by reminding of the nature of that prayer, or by extolling its power in fostering Christian virtues, or finally, by skillfully, lovingly, and reverently explaining the maternal intercession of the Virgin. In this manner, I send to you the Index of the Sacred Indulgences, as a culmination

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of a constant work; for indeed, the Most Blessed Father fulfills the promise of faith, and clearly confirms what has been done up to this point to promote the devotion to the Rosary. The Index is divided into two parts: the first part presents the Indulgences granted to specific Sodalities of the Holy Rosary; the second part presents those common to all the faithful. I trust that, as entrusted to you by the people, you will ensure that the extent of this Apostolic generosity is known and properly appreciated. On this occasion, the Most Blessed Father confidently trusts that you will diligently and piously encourage the faithful to carefully observe the flourishing custom of the Rosary, by giving names to the Sodalities, by dedicating the month of October to the Queen of the Rosary, and also by performing the pious office of the Rosary daily in their own homes and families. Moved by this constant prayer, the most glorious Queen of Heaven will hear and listen to the miserable children of Eve; and whatever help we implore for the afflicted state of the Church, she will undoubtedly grant abundantly. I pray for the lasting happiness of Your Eminence from the bottom of my heart.

Rome, on the 30th of August, in the year 1899.

Your Eminence's most devoted brother,

X. 8

S. Fr. H. M.

CARD. GOTTI

Prefect of the Sacred Congregation for Indulgences and Sacred Relics.

A. SABATUCCI

ARCHBISHOP OF ANTIOCHIA, Secretary.

[*Latin ed. p. 228*]

228 FROM SAINT GREGORY CONCERNING THE INDULGENCES OF THE CONFRATERNITY OF THE MOST HOLY ROSARY. PART ONE: Indulgences Proper to the Confraters.

I. – FOR THOSE WHO JOIN THE CONFRATERNITY.

1. A plenary indulgence, if, having confessed and received Holy Communion, they are received into the confraternity (Gregory XIII, *Gloriosi*, 15 July 1579).

2. A plenary indulgence, if, legitimately enrolled and having confessed, they receive the Sacrament of the Eucharist in the church or chapel of the confraternity, recite one third part of the Rosary, and pray for the intention of the Supreme Pontiff (Saint Pius V, *Consueverunt*, 17 September 1569).

NOTE: – Those who are enrolled in the confraternity may gain these

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indulgences either on the day of their enrollment, or on the next following Sunday or feast day (Sacred Congregation of Indulgences, 25 February 1848).

II. – FOR THOSE WHO RECITE THE ROSARY.

A. – AT ANY TIME OF THE YEAR.

3. A plenary indulgence, once in life, if they recite the Rosary according to the regulations of the confraternity for a week (Innocent VIII, 15 October 1484).

4. If they recite the complete Rosary, all gain the indulgences which are granted in Spain to those who recite the Rosary of the Blessed Virgin Mary (Clement IX, *Exponi nobis*, 22 February 1668).

5. An indulgence of fifty years, once a day, if they recite one third part of the Rosary in the chapel of the Most Holy Rosary, or at least in the presence of the altar of said chapel, or if they are staying outside the city in which the confraternity is established, in any public church or oratory (Hadrian VI, *Illius qui*, 1 April 1523).

6. An indulgence of ten years and as many quarantines, for each time, if they recite the Rosary three times a week (Leo X, *Pastoris aeterni*, 6 October 1520).

7. An indulgence of seven years and as many quarantines, for each week, if they recite the complete Rosary (Saint Pius V, *Consueverunt*, 17 September 1569).

[*Latin ed. p. 229*]

FROM S. CONDECREE ON INDULGENCES 229 8. An indulgence of five years, and as many quarantines, is granted for reciting the Rosary, whenever, in the angelic salutation, the name of Jesus is devoutly pronounced (Pius IX, Decree of the Sacred Congregation for Indulgences, April 14, 1856). 9. An indulgence of two years is granted if the entire Rosary is recited during the week, distributed over three days, for each of these three days, if one-third of the Rosary is recited (Clement VII, Etsi temporalium, May 8, 1534). 10. An indulgence of three hundred days is granted for reciting one-third of the Rosary (Leo XIII, August 29, 1899). 11. An indulgence of one hundred days is granted each time others are encouraged to recite one-third of the Rosary (Leo XIII, August 29, 1899). 12. An indulgence of three hundred days, once a day, is granted if, on Sundays or feast days, one attends an exercise of reciting or singing the Rosary processionally, in each decade before each mystery, either in the church or before images depicted on walls or tablets (Sacred Congregation for Indulgences, May 21, 1892). B. — On certain days of the year or feasts.

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13. A plenary indulgence is granted on the feast of the Annunciation of the Blessed Virgin Mary, if, having received the sacrament of penance and communion, the Rosary is recited (St. Pius V, Iniunctum nobis, June 14, 1566). 14. An indulgence of ten years, and as many quarantines, is granted on the feasts of the Purification, Assumption, and Nativity of the Blessed Virgin Mary, if the Rosary is recited (St. Pius V, ibid.). 15. An indulgence of ten years, and as many quarantines, is granted on the feasts of the Resurrection, Annunciation, and Assumption of the Blessed Virgin Mary, if one-third of the Rosary is recited (St. Pius V, Consueverunt, September 17, 1569). 16. An indulgence of seven years, and as many quarantines, is granted on the remaining feasts of Our Lord Jesus Christ and the Blessed Virgin Mary, in which the sacred mysteries of the Rosary are recited, namely, on the feasts of the Visitation of the Blessed Virgin Mary, the Nativity of Our Lord Jesus Christ, the Purification and Compassion of the Blessed Virgin Mary on the sixth feria after the Sunday of the Passion, the Ascension of Our Lord Jesus Christ, Pentecost, and All Saints' Day, if at least one-third of the Rosary is recited (St. Pius V, ibid.). 17. An indulgence of seven years, and as many quarantines, is granted on the feasts of the Nativity, Annunciation, and Assumption of the Blessed Virgin Mary, if the entire Rosary is recited according to the statutes of the confraternity.

[*Latin ed. p. 230*]

230. From the decrees concerning indulgences: The recitation of the Rosary merits an indulgence (Sixtus IV, *Pastoris aeterni*, May 30, 1478; Leo X, *Pastoris aeterni*, October 6, 1520).

18. A plenary indulgence is granted on the feasts of the Purification, Annunciation, Visitation, Assumption, and Nativity of the Blessed Virgin Mary (Leo X, *loc. cit.*).

III. — FOR THOSE WHO ACCOMPANY THE PROCESSION OF THE HOLY ROSARY.

19. A plenary indulgence is granted to those who, having confessed and received Holy Communion, attend the procession on the first Sunday of the month, and there pray according to the intention of the Supreme Pontiff, and who, moreover, visit the chapels of the Holy Rosary (Gregory XIII, *Ad augendam*, October 24, 1577).

NOTE. — This indulgence, granted to the brethren, can also be obtained by itinerant brethren, those at sea, or those serving in any capacity (including soldiers actively serving), through the complete recitation of the Rosary; and the infirm, or those legitimately impeded, by reciting one-third of the Rosary (Gregory XIII, *Cupientes*, December 24, 1583).

20. A plenary indulgence is granted to those who associate themselves in the procession on the feasts of the Purification, Annunciation, Visita-

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tion, Assumption, Nativity, Presentation, and Immaculate Conception of the Blessed Virgin Mary (Pius IV, *Dum praeclara*, February 28, 1561), or on any day within the octaves of these feasts (Sacred Congregation of Indulgences, February 25, 1848).

21. An indulgence of five years is granted when, from the alms of the confraternity, virgins are endowed with a dowry for marriage, if they participate in the procession (Gregory XIII, *Desiderantes*, March 22, 1580).

22. An indulgence of one hundred days is granted if they associate themselves in the procession on the designated days (Gregory XIII, *Cum sieut*, January 3, 1579).

23. An indulgence of sixty days is granted if they accompany the ordinary processions, whether of the confraternity or any other processions celebrated with the permission of the Ordinary, including the procession of the Holy Sacrament to the sick (Gregory XIII, *Gloriosi*, July 15, 1579).

IV. — FOR THOSE WHO VISIT THE CHAPEL OR CHURCH OF THE CONFRATERNITY.

24. A plenary indulgence is granted on any first Sunday of the month, if, having confessed and received Holy Communion, they do so, and there pray according to the intention of the Supreme Pontiff.

[*Latin ed. p. 231*]

FROM S. CONG. INDULGENTIARUM 231, the intention of the Supreme Pontiff is prayed for (Gregory XIII, Ad augendam, March 12, 1577). NOTE. — This indulgence can also be obtained by infirm brethren who are unable to attend the same church, if, after confession and Holy Communion, they recite the Rosary or a crown (i.e., one-third of the Rosary: S. C. Indulg. February 25, 1877, n. 6), or seven psalms devotedly, at home before a devout image (Gregory XIII, loc. cit.). 25. A Plenary Indulgence, on any Sunday of the month, if, having received the Sacraments, they devoutly attend for some time at the exposition of the Most Holy Eucharist in the church of the confraternity, as far as permission from the Ordinary allows, and there pray according to the intention of the Supreme Pontiff (Gregory XVI, Ad augendam, December 17, 1833). 26. A Plenary Indulgence, if confessors and having received Holy Communion, the chaplains of the Most Holy Rosary or the church of the confraternity visit, and there, from the first vespers until sunset, on the feasts of the Nativity of the Lord, the Epiphany, the Resurrection, the Ascension, and Pentecost: also on two weekdays of Lent chosen at will; and also on the feast of All Saints, and once within the octave of the Commemoration of all the faithful departed (Gregory XIII, Pastoris aeterni, May 5, 1582; Gregory XVI, loc. cit.; S. C. Indulg., May 12, 1851). 27. A Plenary Indulgence, under the same conditions, from the first vespers until sunset, on the feasts of

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the Blessed Virgin Mary, Immaculate Conception, Nativity, Presentation, Annunciation, Visitation, Purification, Assumption, and on the feast of the Seven Sorrows (the Friday after the Sunday of the Passion) (Gregory XIII, loc. cit.; Clement VIII, De salute, January 18, 1593; Gregory XVI, loc. cit.). NOTE a. — A Plenary Indulgence can also be obtained on the feasts of the Blessed Virgin Mary, Conception, Nativity, Presentation, Annunciation, Visitation, Purification, and Assumption, during the octave, but only once during any octave (S. C. Ind., February 25, 1848). NOTE b. — A Plenary Indulgence on the days of Easter, Ascension, and Pentecost, and on the feasts of the Blessed Virgin Mary, Immaculate Conception, Nativity, Annunciation, Visitation, Purification, Presentation, and Assumption, and also on two weekdays of Lent.

[*Latin ed. p. 232*]

232. Through the Indulgences of the Lenten season, it is also possible to acquire [a plenary indulgence] by visiting any other church or public oratory (Sacred Congregation of Indulgences, May 12, 1851). NOTE: Regarding those who are traveling, sailing, serving [in the military], or are infirm, or otherwise legitimately hindered, [a plenary indulgence] is granted to those who visit the church or chapel of the Most Holy Rosary on the days on which the feasts of the mysteries of the Rosary are celebrated, with the same conditions as those who are unable to participate in the procession (n. 19) (Sixtus V, *Dum ineffabilia*, January 30, 1586).

28. A plenary indulgence, under the same conditions, is granted on Sunday within the octave of the Nativity of the Blessed Virgin Mary (Clemens VIII, *Ineffabilia*, February 12, 1598).

29. A plenary indulgence, under the same conditions, is granted on the third Sunday of April, from the first vespers until sunset (Gregory XIII, *Cum sicut*, January 3, 1579).

30. An indulgence of seven years and seven hundred days is granted if, having confessed and received Holy Communion, one visits the chapel or altar of the confraternity, and there prays for the intentions of the Supreme Pontiff on the days of the Nativity of the Lord, Easter, Pentecost, and on the feasts of the Immaculate Conception, the Nativity, the Annunciation, the Visitation, and the Assumption of the Blessed Virgin Mary, as well as on the feast of All Saints (Clemens VIII, *Salvatoris*, January 13, 1593; Ibid., *De salute*, January 18, 1593).

31. An indulgence of one hundred days is granted for each day on which one visits the chapel or altar of the Most Holy Rosary, and there prays for the intentions of the Supreme Pontiff (Gregory XIII, *Cum sicut*, January 3, 1579).

NOTE: Nuns living in cloister, young people of both sexes residing in colleges, seminaries, and boarding schools, and all other persons living in

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institutions from which they cannot freely go out, indeed, even members of Catholic societies, can obtain all the indulgences for which a visit to the chapel or church of the confraternity is prescribed—provided that they are duly enrolled in it—by visiting their own church, chapel, or oratory (Sacred Congregation of Indulgences, August 11, 1871; February 8, 1874). Brothers who are infirm or in any way hindered from receiving the Sacrament of the Eucharist, or from visiting the church or chapel, can obtain all the indulgences for which these conditions are required.

[*Latin ed. p. 233*]

From S. C. INDULGENTIARUM 233, it is prescribed that [those who] having fulfilled confession and other enjoined works, may gain indulgences if they perform some pious work ordered by the confessor. When, on certain feasts, for the visitation of the church or chapel of the Most Holy Rosary, in addition to a plenary indulgence, a partial indulgence has also been granted, a distinct visitation of the church or chapel is also necessary to obtain this [partial] indulgence.

V. — FOR THOSE WHO VISIT FIVE ALTARS.

32. Brothers who visit five altars in any church or public oratory, or five times one or two altars where five are not found, gain the same indulgences as if they were visiting the stations in Rome (Leo X, 22 May 1518).

VI. — FOR THOSE WHO SAY OR HEAR THE VOTIVE MASS OF THE MOST HOLY ROSARY.

33. All indulgences are granted to those who recite the entire Rosary, and for priestly brothers, if they celebrate the votive Mass according to the Roman Missal, for the proper time, at the altar of the Most Holy Rosary (these votive Masses may be said twice a week); but for other brothers, if they attend such a Mass and offer pious prayers to God there (Leo XIII, Ubi primum, 2 October 1898).

34. All indulgences are granted to those who associate themselves with the procession that is customarily held on the first Sunday of each month, for those who have the custom of celebrating or hearing this Mass once a month, on the day when they receive the sacrament of Confession (Clemens X, Caelestium munerum, 16 February 1671).

35. An indulgence of one year is granted to those who attend together the Masses, the sermon on the Blessed Virgin Mary, and the antiphons "Salve Regina" on the Saturdays of Lent (Gregory XIII, Desiderantes, 22 March 1580).

VII. — FOR THOSE WHO PERFORM THE DEVOTION OF THE FIFTEEN SATURDAYS OF THE MOST HOLY ROSARY.

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36. A plenary indulgence is granted for three of the fifteen Saturdays, chosen at the will of each individual, if, during the fifteen Saturdays, they...

[*Latin ed. p. 234*]

EX 234 S « C - CONCERNING INDULGENCES: (either those immediately following or preceding the feast of the Most Holy Rosary, or at any other time within the year) those who, having confessed and received Holy Communion, visit the church of the confraternity and there pray for the intention of the Supreme Pontiff (Sacred Congregation of Indulgences, December 18, 1849). 37. An indulgence of seven years and seven quarantines is granted on twelve Saturdays, excluding those mentioned in number 36 (Sacred Congregation of Indulgences, December 12, 1849). VIII. - FOR THOSE WHO DO NOT PERFORM CERTAIN DEVOTIONS DURING THE MONTH OF THE ROSARY. 38. A plenary indulgence is granted if, during the month of October, in the churches of the Order of Preachers, they have attended at least ten times the customary exercises, on a day of their choosing, if they receive the Sacraments and pray for the intention of the Supreme Pontiff (Sacred Congregation of Indulgences, August 31, 1885). 39. An indulgence of seven years and seven quarantines is granted each time they attend the customary daily devotions in the churches of the Order of Preachers during the month of October (Sacred Congregation of Indulgences, August 31, 1885). IX. - FOR THOSE WHO ASSIST AT THE SINGING OF THE "SALVE REGINA." 40. An indulgence of three years and three quarantines is granted if, in the church of the confraternity, with a candle lit (where the custom prevails; otherwise, add one "Ave Maria"), they attend the singing of the "Salve Regina" in the feasts of the Blessed Virgin Mary which are celebrated by the entire Church, and on the birthdays of the Apostles, and on the feasts of the Saints of the Order of Preachers (Clement VIII, *Ineffabilia*, February 12, 1598). 41. An indulgence of one hundred days is granted on all days throughout the year, if they attend this antiphony after the *Completory* (Clement VIII, *loc. cit.*). 42. An indulgence of forty days is granted on all Saturdays and feast days throughout the year (Leo X, *Pastoris aeterni*, October 6, 1520). NOTE. - Those legitimately prevented from attending the antiphony in the church may lawfully gain the indulgences mentioned in numbers 40 and 41 by reciting it on their knees before the altar or the image of the Blessed Virgin Mary (Clement VIII, *Ineffabilia*, February 12, 1598).

[*Latin ed. p. 235*]

FROM THE DECREE ON INDULGENCES, CHAPTER X — FOR THOSE WHO ENGAGE IN MENTAL PRAYER OR OTHER SPIRITUAL EXERCISES. 43. A plenary indulgence, once a month, if, throughout the entire month, they devote themselves daily to mental prayer for at least half an hour, or at least a quarter of an hour, on the day of their choosing, on

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which they receive the Sacraments of Penance and the Eucharist (Clement X, *Ad ea*, January 28, 1671). 44. A plenary indulgence, if, in memory of the forty days during which the Lord Jesus was in the desert, they devote themselves to prayer, mortification, and other pious works for the same number of days, once a year, on a day chosen by themselves (Pius VII, *Ad augendam*, February 16, 1808). 45. An indulgence of seven years and seven quarantines, each time they devote themselves to mental prayer for half an hour (Clement X, *Ad ea*, January 28, 1671). 46. An indulgence of one hundred days, each time they devote themselves to meditation for a quarter of an hour (Clement X, *loc. cit.*). CHAPTER XI — FOR THOSE WHO VISIT SICK BROTHERS. 47. An indulgence of three years and three quarantines, each time they visit sick brothers (Clement VIII, *Ineffabilia*, February 12, 1598). 48. An indulgence of one hundred days, if they encourage sick brothers to receive the ecclesiastical sacraments (Gregory XIII, *Cum sicut*, January 3, 1579). CHAPTER XII — FOR THOSE WHO PRAY FOR THE SOULS OF DECEASED BROTHERS. 49. A plenary indulgence, if, on the four anniversaries (the days of February 4th, July 12th, September 5th, and November 10th) each year, they attend the offices for the dead, customarily held in the public churches of both brothers and sisters of the Order of Preachers, and, having confessed and received Holy Communion, they pray according to the intention of the Supreme Pontiff, once on each of those four days (Pius VII, *Ad augendam*, February 10, 1808). 50. An indulgence of eight years if they attend the funeral and follow the procession offered in suffrage for the deceased.

[*Latin ed. p. 236*]

256. Concerning Indulgences: On the Sabbath day, or once a month, the following indulgences may be granted by the church of the confraternity, or by the cloister (Gregory XIII, *Desiderata*, March 22, 1580). 51. An indulgence of three years, and as many quadragenaries as there are bodies of deceased confreres brought to the church of the confraternity (Clement VIII, *Ineffabilia*, February 12, 1598). 52. An indulgence of one hundred days, if the bodies of the confreres are brought to burial with the banner of the confraternity, or if one attends the anniversaries celebrated for the souls of deceased confreres, and there prays according to the intention of the Supreme Pontiff (Gregory XIII, *Cum sicut*, January 3, 1579). XIII. — FOR THOSE WHO PERFORM ANY WORK OF CHARITY OR PIETY. 53. An indulgence of sixty days, whenever the confreres perform some work of charity and piety (Gregory XIII, *Gloriosi*, July 15, 1579). XIV. — FOR THE DYING. 54. A plenary indulgence, to be granted by the priest, even outside of confession, through the common formula, if they are accustomed to reciting the Rosary during the week (Innocent VIII, October 13, 1843; Sacred Congregation of Indulgences, Decree, August 10, 1899).

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55. A plenary indulgence, if, departing from this life, they hold a blessed candle of the Holy Rosary, provided that at least once in their life they have recited the entire Rosary (Hadrian VI, *Illius qui*, April 1, 1523). 56. A plenary indulgence, if they receive the Sacraments of Penance and the Eucharist (Pius V, *Consueverunt*, September 17, 1569). 57. A plenary indulgence, if, contrite, they invoke the Holy Name of Jesus, at least in their heart, if they cannot with their mouth (Leo XIII, Rescript of the Sacred Congregation of Indulgences, August 19, 1899). 58. A plenary indulgence, if, having received the sacraments of the Church, professing their faith in the Roman Church, and reciting the antiphon "Salve Regina," they commend themselves to the Blessed Virgin (Clement VIII, *Ineffabilia*, February 12, 1598). NOTE. — Although a plenary indulgence is mentioned here in the article of death, it is subject to the regulations of the Sacred Congregation of Indulgences.

[*Latin ed. p. 237*]

FROM THE CHURCH LATIN MANUAL OF INDULGENCES 237. An indulgence, once only, can be acquired at the hour of death, under one or the other of the various conditions previously explained. XV. – FOR THE DECEASED. 59. In the churches of the Order of Preachers, the altar of the Most Holy Rosary is privileged for the soul of any priest of that same Order (Gregory XIII, Omnium saluti, September 1, 1582). 60. In the churches of the confraternity, the altar of the Most Holy Rosary enjoys the privilege, not only in favor of the deceased confreres, but also of any deceased person, even if another privileged altar exists in the same church. Indeed, if there is no other privileged altar in the church, the altar of the Most Holy Rosary is also privileged for any priest, even if not belonging to the confraternity, and in favor of any deceased person (S. C. Indul. Cameracen. June 7, 1842; Pius IX, Omnium saluti, March 3, 1857).

SECOND PART. Indulgences common to the confreres with other faithful. 61. An indulgence of seven years and seven quarantines, on the first Sunday of each month, if they participate in the procession (St. Pius V, Consueverunt, September 17, 1569). 62. A plenary indulgence as often as, on the feast of the Most Holy Rosary, having received the sacraments, from the first vespers until sunset on that very day, in memory of the victory over the Turks at the Echinadas islands, obtained through the intercession of the Rosary, the chaplains (or the image of the Blessed Virgin Mary exposed in the church: S. C. Ind. January 25, 1866) visit, and there they pray for the intention of the Supreme Pontiff (St. Pius V, Salvatoris, March 5, 1572; S. C. Indulg., April 5, 1869, July 7, 1885).

NOTE. – In order to gain the aforementioned indulgence, confession may be anticipated on the Friday immediately preceding the feast of the Most

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Holy Rosary (Leo XIII, Rescr. S. C. Indulg., August 19, 1899).

[*Latin ed. p. 238*]

-258 FROM THE SACRED CONGREGATION OF INDULGENCES 63. A Plenary Indulgence is granted on the octave day of the feast of the Most Holy Rosary, at the option of each individual, if, having received the Sacraments, they visit the chapel of the Most Holy Rosary, or the image of the Blessed Virgin Mary exposed in the church, and there pray according to the intention of the Supreme Pontiff (Benedict XIII, *Pretiosus*, May 20, 1727; Sacred Congregation of Indulgences, July 7, 1885). 64. A Plenary Indulgence is granted under the same conditions on the feast of Corpus Christi and on the feast of the patron saint of the church (Gregory XIII, *Desiderantes*, March 22, 1580). 65. All and each of the indulgences contained in this Index can be applied, as a suffrage, for the souls of the faithful who, united to God by the bond of charity, have reached their final day; except for the Plenary Indulgence granted at the hour of death (Innocent XI, *Ad ea*, June 15, 1679). DECREE Having, in obedience to the mandate of Article XVI of the Apostolic Constitution *Ubi primum* published last year, the Superior General of the Order of Preachers submitted a new Index of Indulgences to this Sacred Congregation, this Sacred Congregation has carefully examined it, also making use of the assistance of some of its Consultors. And after mature deliberation, having judged that certain things should be omitted, added, declared, or expressed more briefly, all these changes, to be introduced into the aforementioned Index, were submitted to His Holiness, Pope Leo XIII, through the undersigned Cardinal Prefect. His Holiness, in an audience on August 29, 1899, deigned to approve them graciously, and also approved this new Index in all its parts, confirming with His Apostolic Authority all the indulgences contained therein, and, where necessary, granting them anew; at the same time declaring that all other indulgences previously granted to the Confraternities of the Most Holy Rosary, whether abrogated or revoked, are to be considered null and void, so that any confraternity of the Most Holy Rosary, whether already established or to be established in the future, shall be...

[*Latin ed. p. 239*]

FROM THE SACRED CONGREGATION FOR INDULGENCES, 239, to the Order of Preachers: Only those belonging to this Order shall enjoy the Indulgences found in this Index, notwithstanding any contrary provisions. Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 29th of August, 1899. Father HIERONYMUS M., Cardinal GOTTI, Prefect. L. S. A. SABATUCCI, Archbishop of Antinoia, Secretary.

APPENDIX: SUMMARY OF INDULGENCES GRANTED TO ALL THE FAITHFUL FOR THE DEVOTION OF THE HOLY ROSARY.

1. A Plenary Indulgence, once a year, if, on each day, at least one-third

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of the Rosary is recited, and if, on the day chosen by them, they abstain from food, provided they use a Rosary blessed by a religious of the Order of Preachers, or by another priest appointed for that purpose (Raccolta, Edition, 1898, n. 194).

2. An Indulgence of one hundred days for each "Pater noster" and each "Ave Maria," if the entire Rosary, or at least one-third of it, is recited, provided the Rosary is blessed by a religious of the Order of Preachers, or by another priest appointed for that purpose (Ibid.).

3. An Indulgence of five years and as many Quarantines, each time one-third of the Rosary is recited (Ibid.).

4. An Indulgence of ten years and as many Quarantines, once a day, if, together with others, whether at home, or in a church, or in a public or private chapel, at least one-third of the Rosary is recited (Ibid.).

5. A Plenary Indulgence on the last Sunday of each month, if, at least three times a week, one-third of the Rosary is recited together with others, whether at home, or in a church, or in a chapel, and on that last Sunday, having received the Holy Sacrament, they visit a church or a public chapel, and there pray according to the mind of the Supreme Pontiff (Ibid.).

6. A Plenary Indulgence on one of the fifteen consecutive Saturdays, chosen by each individual, if, on each Saturday, they...

[*Latin ed. p. 240*]

240 E X s - G - INDULGENCES are granted for reciting a third part of the Rosary, or for devoutly contemplating its mysteries in another manner (Raccolta, cited edition, no. 197). NOTE. — Whenever the faithful are legitimately prevented from performing this exercise on the Sabbath, they may fulfill it on Sunday without the loss of indulgences (Ibid.). 7. An indulgence of seven years and seven quarantines, for all Sabbaths, except those mentioned above (Ibid.). 8. A plenary indulgence, if, at any time during the year, for nine days in honor of the Most Holy Queen of the Rosary, they devote themselves to pious exercises, reciting prayers approved by legitimate authority, choosing the day at their own discretion, either within the novena or within the eight days immediately following the novena, and, truly penitent, having confessed and received Holy Communion, they pray according to the mind of the Supreme Pontiff (Raccolta, cited edition, no. 149). 9. An indulgence of three hundred days for all other days of the novena, in which they engage in these prayers (Ibid.). FOR THOSE WHO RECITE A THIRD PART OF THE ROSARY IN THE MONTH OF OCTOBER. The following indulgences were granted perpetually by Our Most Holy Father Leo XIII (September 1, 1883; August 20, 1885; July 23, 1898): 10. A plenary indulgence, if, on the feast of the Most Blessed Virgin of the Rosary, or on any day within the octave, they receive the Sacraments properly and visit a church, and there pray according to the intention of

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the Supreme Pontiff, provided that on the feast day and on each day of the octave, either publicly in a church or privately, they recite a third part of the Rosary. 11. A plenary indulgence, if, after the octave of the feast of the Most Holy Rosary, at least ten times within the same month of October, either publicly in a church or privately, they recite a third part of the Rosary, and on a day of their choosing, they receive the Sacraments properly, visit a church, and there pray according to the intention of the Supreme Pontiff. 12. An indulgence of seven years and seven quarantines for each day of the month of October, in which the faithful recite a third part of the Rosary, either publicly in a church or privately. 13. All and each of the indulgences mentioned in this summary are applicable to the souls detained in Purgatory (Raccolta, cited edition, p. xxn, no. 4).

[*Latin ed. p. 241*]

241 EX. SACRED CONGREGATION FOR INDULGENCES. The Sacred Congregation for Indulgences and Sacred Relics, which presides over Indulgences and Sacred Relics, having recognized the following summary of Indulgences granted to all the Christian faithful for the devotion of the Most Holy Rosary as authentic, has permitted it to be printed and published by means of the press. Given in Rome, from the Secretariat of the same Sacred Congregation, on the 29th of August, 1899. FR. HIERONYMUS M. CARD. GOTTI, Prefect. L. © S. f A. SABATUCCI, ARCHBISHOP OF ANTIOCHIA, Secretary. FOR THE CITY AND THE WORLD. Decree concerning the rules or norms for discerning true Indulgences from apocryphal ones. Among the duties entrusted to this Sacred Congregation for Indulgences and Sacred Relics, the most important is that of distinguishing true Indulgences from apocryphal ones, and of condemning the latter. This task has been sufficiently accomplished through numerous decrees issued up to this time, contained in the authentic collection of Decretals. However, although this Sacred Congregation has always been vigilant, from the very beginning of its institution, regarding the publication of Indulgences, so that false ones would not reach the Christian people, nevertheless, even in our own age, there are those who, either out of malice, or even driven by unreasonable zeal, do not hesitate to spread false, or at the very least, highly suspect, Indulgences, whether attached to prayers or to pious exercises, among the faithful. Consequently, several prelates have turned to this Sacred Congregation, seeking its judgment on certain Indulgences. They have done so primarily in order that true Indulgences might be distinguished from false ones, but especially in order to prevent enemies of the Church from having a way to slander and to revile the heavenly treasure of Indulgences. Furthermore, in order that this evil might be remedied as much as possible, the Sacred Congregation has devised certain rules or norms, so that, with these before their eyes, not only the Ordinaries of places, but also the Christian faithful themselves, may easily find a way to determine what

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judgment should be made concerning certain matters.

[*Latin ed. p. 242*]

242 FROM THE SACRED CONGREGATION OF INDULGENCES: Indulgences, which are widely distributed among the people, present a doubtful mark of authenticity. This matter, having been brought before His Most Holy Father Leo XIII by this Sacred Congregation, was approved by the same Holiness, who ordered that it be carried out as soon as possible. Therefore, the Sacred Congregation, having employed the diligent study of the Roman Consultors, undertook to prepare an Index of the aforementioned regulations; which was then presented for examination by the Most Reverend Fathers Cardinals, assembled in a general Congregation at the Vatican on May 5, 1898. These, after carefully considering the aforementioned Index, reserved it for further consideration in another Congregation, with some modifications. This was indeed carried out in the general Assemblies held at the Vatican on August 3, 1899, in which the Most Reverend and Illustrious Fathers considered the following Index to be proposed as follows:

RULE I. All indulgences contained in the most recent Collection published by the Sacred Congregation of Indulgences are authentic.

RULE II. General indulgences, which are not exhibited in the aforementioned Collection, or which are said to have been granted after the publication of the Collection, shall be considered authentic only when a recognized document of their granting has been presented to the Sacred Congregation of Indulgences, to which, under penalty of nullity, it must be presented before they are published.

RULE III. Indulgences granted to Religious Orders and Congregations, Archiconfraternities, Confraternities, Archsodalies, Sodalies, pious Unions, pious Societies, certain more celebrated Churches, pious Guilds, and objects of devotion, which are contained in Summaries recognized and approved by the Sacred Congregation of Indulgences, and published with its authority or permission, are to be considered authentic.

RULE IV. Indulgences, whether general or particular, contained in books, pamphlets, or summaries, are not to be considered authentic.

[*Latin ed. p. 243*]

From the Decrees of the Holy Congregation concerning Indulgences, 243, concerning those printed on leaves, small papers, or even in images, without the approval of the competent authority; this approval must be granted after careful examination and clearly expressed.

RULE V. Apocryphal are considered to be all Indulgences, whether of a thousand years or more, granted at any time, which are said to have been granted.

RULE VI. Plenary Indulgences should be viewed with suspicion, which

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are claimed to have been granted by reciting only a few words; except for Indulgences in articulo mortis [at the point of death].

RULE VII. Indulgences that are circulated in small books, leaves, or papers, printed or handwritten, in which Indulgences and graces are promised for trivial or even superstitious reasons, and uncertain revelations, or under deceptive conditions, exceeding the proper use and manner, are to be rejected as apocryphal.

RULE VIII. Leaves and booklets in which it is promised to the faithful that by reciting one or another prayer, one or more souls will be released from Purgatory, are to be rejected as spurious; and Indulgences that are usually added to such promises are to be considered apocryphal.

RULE X. Indulgences that are asserted to have been recently granted are to be considered apocryphal, or at least to be viewed with grave suspicion, if they claim to grant an unusually large number of years or days.

These rules, which I, the undersigned Cardinal, Prefect of the same Holy Congregation, have reported to His Most Holy Father Leo XIII, were presented in an audience on August 10, 1899, in the same manner.

[*Latin ed. p. 244*]

244 FROM THE SACRED CONGREGATION FOR INDULGENCES: His Holiness has approved, and has commanded that it be published through a general Decree. Given in Rome, from the Secretariat of the same Sacred Congregation, on the 10th of August, 1899. Father HIERONYMUS M. CARDINAL GOTTI, Prefect. L.)$! S. f A. SABATUCCI, ARCHBISHOP OF ANTIOCHIA, Secretary. Comments on the aforementioned rules, approved by the Sacred Congregation for Indulgences and Relics, are added for the sake of clarity. REGARDING RULE I. This rule refers to the collection commonly known as: "Raccolta di Orazioni e pie Opere per le quali sono state concesse dai Sommi Pontefici le SS. Indulgenze." – Rome, Typografia della S. C di Propaganda Fide, 1898. – The very foundation of this rule is clearly evident from the purpose which the Sacred Congregation itself intended in publishing this book. Indeed, in the year 1877, when the first edition of the collection, of which we are speaking, was being prepared for publication by this Holy Congregation, the following declaration was read in the preceding Decree: "His Holiness has graciously approved that an authentic collection, or syllabus, of all and singular prayers and pious works which, up to the present day, have been enriched or increased with indulgences, be diligently prepared by the Secretariat of this same Sacred Congregation." Therefore, that first edition, and subsequently, in 1886, the second edition as well, were declared authentic by the same Sacred Congregation; and now, in the Decree prefixed to the third edition of the year 1898, it is written: "His Holiness, Pope Leo XIII, has approved this collection with his apostolic authority; and therefore, it must be considered as the genuine and authentic collection of indulgences granted up to the present time, for all

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the faithful of Christ, and for certain of their groups, as designated therein, by all the Popes." REGARDING RULE II. Approved by Pope Benedict XIV and Pope Pius IX, by the Sacred Congregation for Indulgences, on the 28th of January, 1756, and the 14th of April-

[*Latin ed. p. 245*]

FROM S. CONGREGATIONIS INDULGENTIARUM 245, paragraph 1856: A decree has been promulgated with the following wording (Decree auth. S. C. Indulg. n. 205 et 371): "Since it has been daily observed that numerous general grants of indulgences are issued without the knowledge of the Sacred Congregation, from which many abuses and confusions arise, after mature deliberation, the present Decree declares that those who request such general grants henceforth shall be subject to the penalty of nullity of the grace obtained, and shall be required to submit a copy of such grants to the Secretariat of the same Sacred Congregation." However, this applies only to indulgences that are entirely and in every respect general: that is, those that are granted to all the faithful for certain prayers or pious works, and indeed perpetually; it does not apply to those that require, in addition, enrollment in a pious union, etc., or visitation of a designated church, or that impose the obligation of wearing a certain scapular or carrying a certain medal, etc., or that are granted for a certain period of time: all of these indulgences are rather to be considered particular, to which the Decree of Benedict XIV and Pius IX does not extend. It can be determined whether new general indulgences have been recognized by the Sacred Congregation if these indulgences are presented by books or authors of all trustworthiness who receive such grants from the Sacred Congregation itself, or at least, with the permission of the same, communicate them to their readers. REGULATION III. This concerns indulgences that are not entirely general, as was the case in the preceding regulation, but rather in some way particular, as is evident from the very wording of this regulation. Indeed, some of the summaries mentioned here, as will be stated immediately in the following regulation, can be recognized and approved only by the Bishops; others, however, must necessarily be presented to the Sacred Congregation for recognition and approval. It is clear that all such summaries, if certainly recognized and approved by the Sacred Congregation itself, are to be held by all as certainly authentic, and do not require any further recognition and approval by the Bishops, even if the episcopal recognition and approval alone might have been sufficient by themselves.

[*Latin ed. p. 246*]

246 FROM S. C. INDULGENTIARUM, RULE IV. In the new Constitution concerning the Prohibition and Censorship of Books, Decree XVII states: "All books, summaries, pamphlets, and folios, etc., in which the grants

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of indulgences are contained, shall not be published without the license of competent authority." And in Decree XV it is written: "Images, in any way printed, of Our Lord Jesus Christ, the Blessed Virgin, etc., whether they have prayers annexed to them, or are published without them, shall not be published without the license of ecclesiastical authority." Hence, it is clear that the authenticity of general or particular indulgences, however printed, does not exist unless the approval of competent authority is present; for the necessary and prescribed element for recognizing and establishing authenticity is lacking. It is stated that the approval must be expressly expressed, that is, with the name of the approver, with the place and time of the approval given. The competent authority, in general, is the Holy Congregation of Indulgences, except in the following cases, in which the approval of the local Ordinary is also sufficient (Decree, auth. n. 388): 1. If it concerns the publication of the grant of a particular indulgence, or the publication of a summary of indulgences, which must be taken only from a single Apostolic Brief or Rescript; 2. If it concerns a summary already published by the authority of the Holy Congregation, except for the list of indulgences, as they say, Apostolicorum (for crowns, medals, etc.), which may be published anywhere and in any language, and requires the approval of the Holy Congregation; except also for any complete version of the Collection of Indulgences, called the "Raccolta"; however, individual indulgences contained therein may be published by the authority of the Bishop, as is evident; 3. If it concerns the summaries of those confraternities which are established by religious institutes or are affiliated with archconfraternities by grant of the Holy See; then the recognition and approval of the Bishop of that place is sufficient, where such religious institutes or archconfraternities have their principal seat (Decree, auth. n. 388). In all other cases, the recognition and approval of the Holy Congregation itself are required, especially if it concerns a summary of indulgences or a collection previously compiled, but never approved, or now being compiled for the first time from various grants.

[*Latin ed. p. 247*]

From S. Congregatione Indulgentiarum, 247: It is evident that such summaries, if certainly already recognized and approved by the Holy Congregation itself, are to be held by all as certainly authentic, and do not require any further recognition and approval by Bishops, even if, perhaps, the episcopal recognition and approval alone would have been sufficient.

REGULATION V. Indulgences of this kind have always been judged by the most serious authors to be foreign to the usage of the Apostolic See. Indeed, if they are referred to before the 14th century, they cannot stand in accordance with the older discipline of the Church (thus Theodor, *a Spiritu Sancto de Indulgentiis*, II, 247): for it is manifestly clear that in the 13th and even the 14th centuries, indulgences were very small in number

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(e.g., 10, 20, 40 days, one year, rarely 5 years or 7, very rarely 20 years). And if they are attributed to later centuries, although many authentic decrees exist in which such indulgences are condemned as apocryphal, not even one document of such a concession has yet been presented which is certainly authentic. If, however, any doubt about a certain indulgence of this kind might exist, recently, by a decree of this Holy Congregation dated May 26, 1898, all indulgences of a thousand or more years have been revoked: so that today not even one can be admitted.

REGULATION VI. The Supreme Pontiffs have always been very generous in granting a plenary indulgence to the faithful who are in articulo mortis, under the condition that, at least with a contrite heart (if they are not able to receive the Holy Sacraments of Penance and Communion), they have devoutly invoked the name of Jesus with their mouth, or at least with their heart, and that they have accepted death as a recompense for their sins from the hand of the Lord with a serene spirit. But, besides the case of being in articulo mortis, it has never been the custom of the Holy See to grant a plenary indulgence to the faithful by reciting only a few words. Indeed, in the entire authentic collection of prayers and pious works, which is called the *Raccolta*, not even one example of this kind is found; if, perhaps, one might except that well-known prayer "O good and most sweet Jesus," to be recited before the image of the Crucifix. But in the first place, that prayer does not consist of so few words, and it presupposes some meditation on the sorrows and wounds of Jesus Christ.

[*Latin ed. p. 248*]

248 FROM THE SACRED CONGREGATION OF INDULGENCES: A crucifix, and, moreover, for obtaining a plenary indulgence, confession and Holy Communion are required, as well as prayers according to the wishes of the Supreme Pontiff. Therefore, it can be repeated what was said in explaining the preceding rule, namely, that there is no certain and authentic document by which the faithful, merely by reciting a few words, have ever been granted a plenary indulgence by the Supreme Pontiffs; on the contrary, many decrees clearly reject such indulgences as apocryphal or suspect.

REGARDING RULE VII: This rule scarcely requires explanation. Since indulgences must be granted only for pious and reasonable causes, the Holy See has never promised such absurd or ridiculous, or impossible things in granting indulgences; indeed, in order that the minds of the faithful might not be deceived by false hope and harmful presumption, several Councils have appropriately warned them not to trust blindly in such books or writings (Cf. Theodor, *De Spir. Sancto* II, p. 327). Certainly, the catalogs of indulgences promulgated by the Supreme Pontiffs clearly demonstrate this. It suffices to cite, from among many, a certain prayer, which was said to have been found in the sepulcher of our Lord Jesus

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Christ, and which was formerly revealed to Saint Elizabeth, Queen of Hungary, Mechthild, and Bridget, which, along with all its extravagant promises, was condemned as apocryphal by this Holy Congregation in the year 1678, and again on May 26, 1898.

REGARDING RULE VIII: Although the Supreme Pontiffs in past centuries have also used such a formula in granting indulgences, namely, that to the faithful who recite certain prayers (not merely a few words, as mentioned above in rule six), or who perform certain pious works, freedom for one soul from purgatory is promised, nevertheless, this should generally be understood in no other sense than that any plenary indulgence granted to the faithful by the Supreme Pontiffs is declared applicable to any soul detained in purgatory, as is indicated by the style currently used by the Curia. Certainly, however, it cannot be proven from authentic documents that anyone ever promised the freedom of multiple souls from purgatory at the same time, and much less for the recitation of only one or another prayer.

[*Latin ed. p. 249*]

FROM THE SACRED CONGREGATION FOR INDULGENCES, 249: Just as such assertions ought to be considered as poorly founded, so too are the promises of indulgences attached to them, and they are to be rejected as apocryphal and of no value; indeed, such indulgences are often exaggerated and exceed the usual limits, as was stated in the preceding rule. REGARDING RULE I X. The Church, as is well known, has for a long time granted partial indulgences, using certain established formulas, such as, for example, 50, 100, 200, or 300 days, or one year, or 3, 5, 7 years, and the same number of Quarantines; but indulgences, such as, for example, 1080 days, as were indicated on certain medals of the B.V.M., which were sold by Laureti almost forty years ago, are entirely foreign to the practice of the Apostolic See: and for this reason, this Sacred Congregation declared them apocryphal on February 23, 1856 (Decree auth. no. 370). Nowadays, it often happens that the maximum number of days of indulgences is indicated in publications, because the authors or editors have converted the numbers of years and Quarantines into corresponding numbers of days at their own discretion; thus, by means of such calculations, a thousand or more days of indulgences are immediately obtained. It is undoubtedly the result of a certain, not commendable, rivalry: for they wish to demonstrate, for example, that the indulgences of one confraternity or pious work are greater than those granted to others of a similar nature. It is highly desirable that local Ordinaries do not approve of such schedules or booklets, even if the calculation appears to correspond to the truth. FROM THE SACRED CONGREGATION FOR RITES – REGARDING INDULGENCES. To the Reverend Servant of God Mark Criado, a priest of the Order of the Most Holy Trinity for the Redemption of Captives,

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confirmed in the service of the cult. Mark, commonly known as Criado, was born in Illiturgis, commonly Andujar, in Spain, in the year of the restoration of salvation, from parents distinguished by nobility and virtue. From his youth, he showed signs of future sanctity.

[*Latin ed. p. 250*]

250 From the life of Saint Marcus, Karlova offers clear signs. He was so inflamed with the study of Christian instruction and with zeal for piety towards God and the Most Blessed Virgin, that he inspired even his equals to unity through word and example. Having renounced worldly pursuits, he withdrew to a hermitage attached to the celebrated temple of the Blessed Virgin Mary of La Cabeza; and there, illuminated by heavenly light, with the help of the Virgin herself, he made his vows, and in the year 1536, he put on the religious habit of the Order of the Most Holy Trinity. After completing his novitiate, he devoted himself to the study of philosophy and theology, with equal praise for his intelligence and learning. Ordained to the priesthood, and with the permission of his superiors, he traveled through various regions of Spain, especially those that were more cruelly oppressed under the Moorish yoke. The entire region known as Las Alpujarras, together with the city of Almerina, still remembers and celebrates this apostolic man with joy and gratitude; at that time, the suburb of Almerina, outside the Trinitarian monastery, was inhabited only by Moors. By order of their leader, Abhencota, the Servant of God, Marcus Criado, was captured by these most bitter enemies of the Christian name, and after other torments, he was cruelly tortured by being tied to an oak tree near the village of La Peza and pelted with stones. For three days he remained suspended, praying to God for his persecutors and proclaiming the Catholic Faith; until, finally, they cut open his chest and tore out his heart; which, it is said, immediately shone with a wondrous light and bore the inscription of the Most Holy Name of Jesus, as also on the acorns of that same oak tree. From that time, around the year 1569, when Marcus Criado was crowned with glorious martyrdom, public and ecclesiastical veneration was offered to this Servant of God, especially by the people of Peza and in the Diocese of Guadix; and Pope Benedict XIV decreed on September 15, 1747, that he could and should be tolerated, and that the approval of this cult by the Holy See should be considered sufficient for the introduction of beatification, either formal or equivalent; for which purpose, the same Pope ordered that the proceedings should be carried out according to the prescriptions of the Decrees of Pope Urban VIII. Now, with the Most Reverend Father Antonino ab Assumptione as the most recent promoter of this cause, and with the entire Order of the Most Holy Trinity offering their prayers, the Most Holy Pope Leo XIII, through a Decree of the Sacred Congregation of Rites dated April 24th of this year, granted special grace, considering in particular the

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clarity of the martyrdom of the Servant of God, and for the purpose of...

[*Latin ed. p. 251*]

FROM THE SACRED CONGREGATION OF RITES, article 25, concerning the granting of dispensations in the same cause, regarding the age of Urban, which must be completed with thirty-five years, a benevolent dispensation was granted. Therefore, having considered the Ordinary Proceedings in the Ecclesiastical Court of Guadix, adorned with documents from the years 1773 and 1865, as well as more recent documents and petitions, accompanied by fervent prayers of the Most Reverend Bishop of Guadix, and especially the aforementioned Apostolic Indult, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites and Relator in this cause, at Ordinary Meetings of the aforementioned Sacred Congregation held in Vatican on the date indicated below, proposed the following question for discussion: Does it pertain to the public ecclesiastical cult offered to the aforementioned Servant of God, or to a case excepted from the Decrees of the Most Holy Pope Urban VIII in the case and for the purpose in question? And the Sacred Congregation itself, having duly considered all matters, and having also heard the voice and written opinion of the Reverend Father Doctor John Baptist Lugari, Promoter of the Holy Faith, decided that the answer should be: Affirmative, that is, it pertains. July 11, 1899. Having related all of the above to the Most Holy Pope Leo XIII through the undersigned Cardinal, His Holiness approved and confirmed the judgment of the Sacred Congregation of Rites, on the twenty-fourth day of the same month and year. C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites. L. S. DIOMEDES PANICI, Secretary of the Sacred Congregation of Rites. FROM THE SACRED CONGREGATION OF THE HOLY OFFICE, QUESTION: Whether it is permissible to follow the mean time of Greenwich, which is indicated only by the clocks of railway stations, etc., and not by other public clocks, for natural fasting and other ecclesiastical obligations. Most Blessed Father, On April 27, 1892, the Most Reverend Archbishop of Utrecht proposed the following question to the Sacred Congregation of the Holy Office: "Since, from May 1, 1892, all the clocks of railway stations throughout the Netherlands will indicate the time according to the mean time of Greenwich in England, which is approximately one-third of an hour behind the mean time..."

[*Latin ed. p. 252*]

252. Durante el tiempo de la S. Congregación de la Inquisición en Neerlandia, y dado que se ha establecido una zona horaria, el Gobierno civil ha decretado que incluso los relojes de las oficinas públicas, para la expedición de cartas y mensajes telegráficos, deben indicar la misma hora media del lugar de Greenwich. Además, dado que, ya sea por orden del gobierno civil o por costumbre, otros relojes públicos también se ajustarán a la hora

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mencionada, surge la siguiente cuestión: ¿Pueden los clérigos y los fieles en toda Neerlandia, al observar el ayuno natural y otras obligaciones eclesiásticas, observar la hora media del lugar de Greenwich, o deben seguir la hora verdadera según el meridiano de su propio lugar?

A esta duda, los Eminentes y Reverendísimos Cardenales Inquisidores Generales, el día jueves, 9 de mayo de 1892, decretaron responder: "Afirmativamente" a la primera parte, y "negativamente" a la segunda.

Ahora bien, algunos dudan nuevamente, y sostienen que los clérigos y los fieles en Neerlandia no pueden utilizar la mencionada hora media de Greenwich para el ayuno natural y otras prescripciones eclesiásticas, dado que, de hecho, otros relojes públicos en muchos lugares no se han ajustado a dicha hora.

Dado que la importancia de observar el ayuno, especialmente el ayuno natural, es considerable, Su Santidad se digna resolver benignamente la siguiente duda: ¿Es lícito para los clérigos y los fieles en Neerlandia, al observar el ayuno natural y otras obligaciones eclesiásticas, seguir la hora media de Greenwich, que desde el 1 de mayo de 1892 se ha introducido en todas las oficinas públicas, tanto de ferrocarriles como de expedición de cartas y telegramas, en toda Neerlandia? — Y Dios, etc., el día jueves, 9 de agosto de 1899.

En la Congregación General de la S. R. y U. Inquisición, celebrada por los Eminentes y Reverendísimos DD. Cardenales Inquisidores Generales, tras exponer la duda mencionada, y teniendo en cuenta el voto de los RR. DD. Consultores, los Eminentes y Reverendísimos Padres decretaron responder: "Afirmativamente".

El día siguiente, el día viernes, 11 del mismo mes y año, en la audiencia habitual concedida por Su Santidad, el Papa León XIII, Div. Prov. Pp. XIII, al R. P. D. Asesor, Su Santidad aprobó la resolución de los Eminentes Padres.

I. CAN. MANCINI, Notario de la S. R. y U. Inquisición.

[*Latin ed. p. 253*]

FROM THE SACRED INQUISITION 253: DOUBT: Does the decree of the Holy Office of July 5, 1899, by which Superiors are forbidden to hear the confessions of their subordinates, derogate from the apostolic constitutions that concern religious orders (1)?

Most Blessed Father, N. N., prostrate at the feet of the Holy See, humbly presents that, by a decree of Clement VIII of March 19, 1593, the novices of the religious orders not only may, but must, confess to their own Master, who is the Superior of the novitiate. Furthermore, with another decree of May 26, 1593, the same Pontiff established that in religious communities, Superiors must not hear the confessions of their subordinates, unless it concerns reserved sins, or when they are freely requested by the subordinates themselves. The undersigned therefore implores that it be declared

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whether the decree of the Holy Office of July 5, 1899, by which Superiors are forbidden to hear the confessions of their subordinates, has derogated from, or not, the aforementioned decrees of Clement VIII.

So it was decreed. On Thursday, August 23, 1899, in the General Congregation of the Sacred Roman and Universal Inquisition, held by the Most Eminent and Most Reverend Cardinals General Inquisitors, concerning the aforementioned doubt, and after the vote of the Most Reverend Consultors, the same Most Eminent and Most Reverend Fathers ordered that the following should be answered: By the decree of the Holy Office of Thursday, July 5, 1899, nothing has been derogated from the apostolic constitutions with regard to religious orders. On the following Saturday, the 25th of the same month and year, during the customary audience granted by the Most Holy Divine Providence, Pope Leo XIII, Reverend Prelate, approved the resolution of the Most Eminent and Most Reverend Fathers.

I. CAN. MANCINI, Secretary of the Sacred Roman and Universal Inquisition.

(1) For the benefit of the readers, the apostolic dispositions on the subject: "To these alone, the Master, must be entrusted the care of hearing the confessions of the novices. However, it is permitted to the local Superior also, if he judges it expedient, either by himself, or by another appointed by him, to hear the confessions of these same novices once or twice a year." (Clement VIII, March 19, 1593). "It is not permitted to Superiors of religious orders to hear the confessions of their subordinates, unless they have committed some reserved sin, or unless the subordinates themselves spontaneously and of their own accord request it from them." (Clement VIII, May 26, 1593).

[*Latin ed. p. 254*]

254 FROM THE SUPREME SACRED INQUISITION: A QUESTION: Whether margarine (butter artificially produced) can be used as food or condiment whenever the use of butter is permitted. Thursday, September 6, 1899. The following question was presented to this Supreme Congregation of the Sacred Roman and Universal Inquisition: Whether it is permissible to use margarine as food or condiment on those days when the use of meat or fat from meat is forbidden, provided that the use of butter remains permitted? Furthermore, in the General Congregation held by the Most Eminent and Most Reverend Cardinals, General Inquisitors in matters of faith and morals, concerning the aforementioned question, it was ordered that the following response be given to the Fathers: Affirmative, so let it be decreed. On the following Friday, September 7th of the same month and year, during the usual audience granted by His Holiness Pope Leo XIII, Divine Providence, the Most Holy Father approved and confirmed the resolution of the Most Eminent Fathers. I. CAN. MANCINI, Notary of the Sacred Roman and Universal Inquisition. QUESTION: Whether

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the Indi-Goajiri can be baptized. Most Blessed Father, The undersigned Moderator of the Missionary Region of Goajira in Colombia, humbly prostrates himself before Your Holiness, and reports as follows: The Indi Coajiri number approximately 40,000, and are subject to the government of Colombia only in name. They live a life almost like that of wild men, completely alien to any influence of urbanity or civilization. Although they maintain continuous commerce with the citizens of Colombia and Venezuela, and neighboring cities are visited daily; they conduct purchases and sales in these cities, but they completely reject the bonds and benefits of civil life. The origin of all evil, in which they almost exclusively believe, and which they superstitiously venerate, or rather, attempt to appease, and they scarcely retain any notion of the Supreme Good, which is God. They lead a wandering, or nomadic, life, but in a certain sense; that is, each small tribe or group of

[*Latin ed. p. 255*]

From the Sacred Congregation for the Propagation of the Faith: "These families have a fixed leader, and they remain in a relatively small territory from which they rarely venture out; hence, they form almost like wandering villages in order to find sufficient pastures. Furthermore, in their dealings with citizens or with Hispano-American inhabitants, they have acquired some notions of the Catholic religion, and they retain a great appreciation and desire for the sacrament of Baptism, especially for young children." "They have undoubtedly been led to this also by the advantage that is often reported from Baptism. Indeed, Hispano-American citizens are happy to assume the role of godparents, and they often give something to the parents of these children being baptized. Sometimes it happens that children baptized in this way have a father who is a civil man and a mother who is a Goajira woman. For the Goajira Indians abhor all impurity outside of legitimate marriage, and they severely punish those who violate the law of chastity; but this law only prohibits illicit commerce between Goajira Indians, but not carnal relations between a Goajira woman and a civil man who pays her for the benefit of the Goajira family. And in this case, the man does not want to have any care for this offspring, and perhaps even if he wanted, he could not, because the Goajira Indians prohibit it; but he can easily see the child, and he can effectively provide for the Baptism of the child by offering gifts. Furthermore, in practice, children of this kind, if they reach the age of discretion, lead a life almost like that of wild animals and are alienated from the practice of the Christian religion. Adults, however, who are somewhat instructed and request and receive Baptism, captivated by the love of a wild and wandering life, as has been said, remain in the Goajira region and imitate the customs of the infidels; they rarely accept the help of the religion during their lives, but more easily, especially at the point of death, if they have access to a priest. In such circumstances,

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even before our mission was founded, many children and not a few adults were baptized by priests, especially from neighboring countries, to which the Goajira Indians frequently come. And this practice, with the advice of the then-deceased and the current Bishop, in whose territory the Goajira region is located, we have followed. However, recently, we have been very doubtful about the propriety of this course of action, and we have been more strict about this matter. But because of the long-standing custom in the region, and because the Goajira Indians who live there, and the Christians who live in the neighboring countries, and even the Most Reverend Bishop himself..."

[*Latin ed. p. 256*]

256 From the Sacred Congregation of the Inquisition, some have disapproved of the change we have made, and they have judged it to be a harsh rigorism. Indeed, the parish priest of a certain nearby town today baptizes Indian "children," whom we do not dare to baptize, and in this he follows the example of the present Bishop of Marthe, who did the same while holding the office of parish priest in the town of Riohacha. Therefore, the following questions are raised: I. In the circumstances presented, can the Goaji people be lawfully baptized? II. Can we, with a safe conscience, maintain the judgment of the most esteemed Bishop of Marthe, who entirely supports the lawfulness of this practice? Thursday, September 6, 1899. In the General Congregation of the Holy Roman and Universal Inquisition, held by the Most Eminent and Reverend Cardinals, Inquisitors General in matters of faith and morals, after the aforementioned petitions were presented, and after the vote of the Most Reverend Consultors was heard, and after all matters were discussed with due deliberation, the same Most Eminent and Reverend Fathers ordered that the following be answered: In the circumstances and conditions presented, it is possible to lawfully baptize the Goaji people; however, it should be left to the prudence and conscience of the Missionaries in each individual case to baptize adults or children of the Goaji people. And let the Decree of the Holy Office of the year 1867 be given to the Apostolic Prefect of Nossi-bé. Furthermore, this type of decree reads as follows: "It should be left to the prudent judgment and conscience of the Missionaries (if it can be heard, to the Apostolic Prefect), who, in the circumstances presented, may baptize children brought by parents who have not baptized them, provided that in each case, no serious danger of perversion is foreseen, and provided that it is not established that the parents are offering their children for baptism out of superstition." Furthermore, on the following Friday, September 7th of the same month and year, in the usual audience granted by His Holiness, Pope Leo XIII, Divine Providence, the resolution of the Most Eminent and Reverend Fathers was ratified and approved. I. Canon Mancin, Notary of

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the Holy Roman and Universal Inquisition.

[*Latin ed. p. 257*]

257. Suspension of Indulgences and Privileges during the Year of the Universal Jubilee of the Nineteenth Century. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE PERPETUAL REMEMBRANCE OF THIS. What the Most Holy Pontiffs have decreed, that the solemnities of the Holy Year should be celebrated especially in Rome, is indeed very fitting with the divine providence and the greater dignity and functions of the venerable City. For this is the common homeland of all Christians, wherever they may be; this is the principal seat of sacred power, and the eternal guardian of the doctrine entrusted by God; from here, as from a single, most august head, life is propagated throughout all the veins of the Christian republic through perennial communication. Therefore, nothing is more fitting than for Catholic people, called by the Apostolic See, to come here at certain intervals of time, so that they may, indeed, together and at the same time, find remedies for the expiation of souls in the City, and acknowledge the Roman authority in person. Since this appears so salutary and fruitful, we certainly desire that the city of Rome be celebrated next year with a greater frequency of mortals than ever before; and for this reason, to encourage those who are eager for a pilgrimage to Rome, we intend to suspend the indulgences that have been granted with liberality and grace by the Church, namely, as many of Our predecessors have been accustomed to do in similar cases, We suspend, by Our apostolic authority, the customary indulgences for the entire Holy Year; but, with a certain prudence and moderation, as will be written below. We wish and decree that the following remain entire and unchanged: I. The indulgences granted at the hour of death; II. That one, by which those who, moved by the sacred air, have recited the Angelic Salutation, or another prayer appropriate to the time, kneeling or standing, enjoy the benefits, by the authority of Our predecessor, Benedict XIII; III. The indulgence of ten years and ten quarantals, granted by the authority of Pius IX in the year 1876, to those who piously visit the temples in which the august Sacrament is to be adored within a space of forty hours. (Aeta, Vol. XXXII, p. 357, n. 17).

[*Latin ed. p. 258*]

258 LETTER IV. Furthermore, We decree that those privileges granted by Our predecessors, Innocent XI and Innocent XII, to those who confess when the Sacrament is brought to the sick, or who send candles or lights through others on that occasion, shall remain in force. V. [A grant of indulgences] is added to those who, for the sake of piety, visit the church of the Holy Angels of the Order of Friars Minor, located outside the walls of Assisi, from the vespers of the Feast of August to sunset on the following day. VI. [A grant of indulgences] is added to those granted by the Most

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Holy Roman Church, by Cardinals Legates, Apostolic Nuncios, and also by Bishops, in the exercise of their pontifical authority, or by bestowing a blessing or other customary form. VII. [A grant of indulgences] is added to those granted to privileged altars for the benefit of the faithful departed, and also to those granted for the benefit of the souls in Purgatory, as well as to any indulgences granted to the living, but only for the purpose that they may be directly applied for the benefit of the departed, as an act of suffrage. We decree that all and each of these shall benefit the departed, and not the living. Regarding the faculties, We establish and decree the following: I. The faculty of granting indulgences in articulo mortis, and of communicating [the Sacrament], to Bishops and other local Ordinaries, is confirmed and remains in force, according to the letters granted by Our predecessor, Benedict XIV, on the ninth of April in the year 1747. II. Furthermore, the faculties of the Tribunal of the Office of the Inquisition against heretical depravity, and of its officials, are confirmed and remain in force; also, the faculties of Missionaries and Ministers who have been appointed either by the same Tribunal, or by the Congregation of the Most Holy Roman Church of Cardinals, entrusted with the affairs of the Propagation of the Faith, or by others appointed by the Apostolic See for this purpose: specifically, the faculty of absolving from heresy those who, having renounced error, have returned to the faith. III. The faculties granted by the Office, of Our Apostolic Missionaries, for exercising [their duties] in the places of their missions, and on the occasion of those missions, are confirmed and remain in force. IV. Furthermore, the faculties of Bishops and other sacred prelates concerning dispensations and absolutions of their subjects in hidden cases, even those reserved to the Apostolic See, are confirmed, as they are recognized by the Sacred Council of Trent, or otherwise, even in public cases, by the common ecclesiastical law, and by the Apostolic See for certain persons and cases.

[*Latin ed. p. 259*]

LETTERS 259. We likewise decree concerning the faculties of Superiors of Religious Orders, and whatever faculties have been granted to them by the Apostolic See concerning those subject to them in the Regular [Canons]. With the exception of those concerning which We have mentioned above, We suspend all other and individual Indulgences, both plenary, even those granted in the manner of a Jubilee, and those that are not plenary, and We order that none be [granted]. In like manner, We suspend the faculties and indulgences for absolving even from sins reserved to Us and the Apostolic See, for relaxing censures, for changing vows, and for dispensing even in cases of irregularities and impediments granted in any way, and We will that none be granted to anyone, and We decree. Therefore, by the authority of these Letters, We command and order that, except for the Indulgences of the Jubilee, and those which We have expressly excepted

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above, no other Indulgences whatsoever be publicly proclaimed, indicated, or put into use, under penalty of incurring excommunication and other penalties to be inflicted at the discretion of the Ordinaries. Furthermore, We will that all that is contained in these Letters be established, ratified, and valid, notwithstanding anything to the contrary. We will that copies or transcripts thereof, even printed ones, be held to have the same validity as the present Letters if they were exhibited or shown, provided they are authenticated by the hand and seal of a public Notary, a person constituted in ecclesiastical dignity. Therefore, no human being may infringe this page of Our suspension, decree, declaration, and will, or dare to act presumptuously against it; but if anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God and of the blessed Apostles Peter and Paul. Given at Rome, at Saint Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-nine, on the eve of October, in the twenty-second year of Our Pontificate.

C. CARD. ALOISI-MASELLA, PRO-DAT.

A. CARD. MACCHI.

Seen by DE CURIA, I. DE AQUILA, and VICECOMITES. (In place of Lead)

Reg. in Secret. Brevium I.

CUGNONIUS.

[*Latin ed. p. 260*]

260 CONSTITUTION: By the divine providence of Our Most Holy Father Leo XIII, Pope, this Constitution grants indulgences for the Jubilee year of 1900 to nuns, oblates, tertiaries, and other women, whether young or old, living in pious monasteries or communities, to hermits, the infirm, those detained in prisons or captivity, with appropriate faculties regarding absolutions and the commutation of vows. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE SAKE OF FUTURE MEMORY.

Considering the infinite charity of the Eternal Shepherd, who calls his own sheep by name (1), that they may have life and have it abundantly (2), and who not only awaits their coming to his fold, but often anticipates it himself, we have resolved to open the treasury of Apostolic liberality in the coming Jubilee year, even to those whose condition does not permit them to undertake the prescribed pilgrimage to this venerable City and to the tombs of the blessed Apostles. Therefore, it has seemed fitting that the faith and piety of many should not be rendered fruitless, who would undertake this journey with the utmost devotion, were they not hindered by the walls of the monastery, or by unavoidable captivity, or by bodily

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infirmity. This relaxation and benevolence will not only benefit the needs and utility of these individuals, but will also contribute to the common salvation of all. For, with the united prayers and tears of so many people, whom either the innocence of their lives and the fervor of their religion, or penance, or misfortune, have separated from others, it will be possible to foster a much stronger hope of appeasing divine mercy. Wherefore, by the present document, we have decreed to describe the appropriate means by which men and women who constantly live in hermitages, monasteries, and religious houses, or who are detained in prisons or jails, or who are hindered by illnesses or infirmities from approaching the venerable tombs of the Apostles and the patriarchal basilicas of the City, may participate in the granted absolutions and the plenary Jubilee. Those who are included under this provision are: I. All nuns, who have made solemn vows of religion and live in monasteries under the perpetual discipline of the cloister; also those who are engaged in their novitiate, or who are in monasteries, or are... (1) Jn. 10:5. (2) Ibid. 10.

[*Latin ed. p. 261*]

CONSTITUTION 261. Those who, for the sake of education or for some other legitimate reason, are delayed. Likewise, the nuns of such monasteries, who, for the purpose of collecting alms, go out beyond the religious enclosure: II. Those who are bound together in a community of life, whose institutions have been established by the Apostolic See, or by a stable reason, or have been proven by experiment, together with their novices and the girls being educated, and all others who live in common with them, although they are not subject to the stricter law of enclosure. III. Tertiary women living together under one and the same roof with their novices and the girls being educated, and with all others who live with them, although they are in no way subject to the stricter law of enclosure, and whose institution has never, up to this day, been approved by the Apostolic See, nor ought to be considered as approved in the future by virtue of the present concession: IV. Girls and women living in convents or institutions, although they are neither nuns, nor oblates, nor tertiaries, and are subject to no laws of enclosure. We decree and declare that all of those mentioned above, both in the City and outside, everywhere in places and nations, may enjoy the benefit and privilege of the present concession. V. We grant the same concession to hermits and solitaries, not to those who are not subject to any laws of enclosure, or who live in a community or society, or who are solitary under the jurisdiction of their superiors, and who observe certain laws or rules; but to those who live a life dedicated to contemplation, either continuously or, although not always, perpetually, even if they belong to a monastic or regular order, such as some of the Cistercians, Carthusians, and the hermits of Saint Romuald. VI. We extend the same benefit of this concession to both men and women who are held captive in the power of

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the enemy, and to those everywhere who are detained in prison for civil or criminal reasons; also to those who are undergoing the penalty of exile or deportation; to those who are condemned to work on ships or elsewhere; and finally, to religious men who are detained in their monasteries under custody, or who, by order of their superiors, have a certain place assigned to them, as if it were a place of exile or deportation. VII. We also wish this same concession to be common to both men and women who are infirm, of any order and condition, or who, even outside the City, have contracted some illness, of which...

[*Latin ed. p. 262*]

262. Those who, by reason of illness, are unable to travel to the City within the Jubilee year, or who, although they have recovered, cannot undertake the Roman journey without great discomfort, or who, by reason of their infirmity, are altogether prevented from traveling, shall be included. We wish, moreover, that the aged, who have surpassed the seventieth year of their age, should be included among these. Therefore, we warn, exhort, and implore all of them, remembering their sins with bitterness of soul, and detesting them with the deepest feelings of their hearts, to diligently cleanse their consciences through the most salutary Sacrament of Penance and through suitable acts of penance; then, with faith, reverence, and charity, let them approach the heavenly banquet, and let them pray to God, the supreme and greatest, through His only-born Son, and through the most august merits of the Virgin Mary and of the blessed Apostles Peter and Paul, and of all the Saints, according to Our will and the will of the Church, for the prosperity and growth of the holy Church, for the eradication of errors, for the concord of Catholic princes, and for the tranquility and salvation of the entire Christian people; and for this purpose, let them diligently perform the visitations to the four Basilicas of the City, and other works of religion, piety, and charity, whether voluntary or, especially, those ordered by Our authority to be performed by chosen men of the sacred order, as is stated below.

We certainly will and command that Venerable Bishops and other Ordinaries of places establish and prescribe suitable works of religion and piety for nuns, oblates, tertiaries, and other persons mentioned above, whether they be girls or women, hermits, recluses, those detained in prisons, the sick, and those who are seventy years of age or older, either by themselves or through prudent confessors, according to the condition, circumstances, and health of each individual, and according to the reasons of place and time: and we decree that the performance of these works for the visitations to the four Basilicas of the City shall be efficacious. We grant to Regular Prelates the faculty of changing these works, to be used with regard to institutions and individuals who are within their jurisdiction.

Likewise, we wish that suitable works be assigned to those who reside in

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the City through Our beloved Son, the Cardinal Vicar of the Holy Roman Church, and his representatives, either by themselves or through prudent confessors. Therefore, trusting in the mercy of Almighty God and by the authority of the blessed Apostles Peter and Paul, we grant to all of them,

[*Latin ed. p. 263*]

To those whom we have mentioned above, who are truly penitent and who, within the present Jubilee year, have been properly reconciled through confession and have received Holy Communion, and who pray to God, as has been said above, and who finally perform all the other works that are prescribed for the time of visitation, or, even if they have only begun those same works, if they are afflicted by a dangerous illness, we grant and concede, from the abundance of Apostolic generosity, the fullest indulgence, forgiveness, and remission of all sins, even twice over within the course of the holy year, as if they had fulfilled all the prescribed works in common with all others. We also wish to allow nuns and their novices to, at most, once, choose confessors from either of the Orders of the clergy, provided that they have been duly approved to hear the confessions of nuns. To hermits and solitaries, as mentioned above, as well as to oblates, tertiaries, girls and women living in monasteries and pious houses, to whom, perhaps, at a given time, the free choice of confessors is not available, and also to the faithful who are hindered by captivity, imprisonment or custody, infirmity or old age, we permit, at most once, to choose any confessors they wish, provided that they have been duly approved to hear the confessions of lay people. The same applies to religious men from any Order or Congregation or Institute, under the same conditions. To the confessors thus chosen, we grant and concede the power to absolve the aforementioned persons from any sins, even those reserved to the Apostolic See, except in the case of formal heresy and excommunication, and to impose salutary penance and other things, according to the canonical sanctions and the rules of sound discipline. Furthermore, we grant to the confessors chosen by the nuns the power to dispense from any vows that they have made after their solemn profession, provided that they do not in any way oppose regular observance. Similarly, we also wish that the aforementioned confessors may dispense and change all the vows that oblates, novices, girls and women engaged in communal houses have made, except those that are reserved to Us and to the Apostolic See; and, after such a change has been made, they shall also absolve them from the observance of the vows. We exhort the Venerable Brothers Bishops and other local Ordinaries, that, following the example of Our Apostolic benevolence, they may grant, for the purpose of the present decree, the

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power to choose confessors.

[*Latin ed. p. 264*]

264. A CONSTITUTION establishing that those who refuse [to exercise] the faculty of absolving from sins which have been reserved to the Ordinaries themselves, shall be held accountable. Finally, We desire that this document, whether transcribed or printed, be appended with the same faith by all, and that it be secured by the hand of a public notary and the seal of a man established in the dignity of the sacred order, so that it may be held as valid by all, as if it were presented or shown. Furthermore, We decree that these decrees and commands of these letters are valid and shall be held as such in all places, notwithstanding any contrary provisions. Therefore, it is not permitted to any human being whatsoever to infringe upon this page of Our declaration, exhortation, concession, derogation, decree, and will, or to dare to contradict it with reckless audacity; but if anyone should presume to attempt this, let him know that he will incur the wrath of the Almighty God and of the blessed Apostles Peter and Paul. Given at Rome, at Saint Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-nine, in the twenty-second year of Our Pontificate.

C. CARD. ALOISI-MASELLA, PRO-DAT.

A. CARD. MACCHI, S. I., Visa DE CURIA.

I. DE AQUILA, e VICECOMITIBUS (Loco SS Plumbi).
Reg. in Secret. Brevium.

I. CUGNONIUS.

[*Latin ed. p. 265*]

APOSTOLIC LETTERS 265. APOSTOLIC LETTERS, by which, for the Jubilee year, are granted faculties concerning the administration of Penance in the Basilicas and Churches of the City, to those designated by the Cardinal Major Penitentiary, and to confessors appointed by the Cardinal Vicar of the City. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE SAKE OF FUTURE MEMORY. Since, by the grace of divine goodness, it has fallen to Us to announce a great Jubilee for the coming year, there remains nothing that We desire, nor anything that We strive for more earnestly, than that it may have a prosperous outcome, and that the hoped-for benefits, with God's help, may be fully realized. We shall indeed diligently apply Ourselves to the salvation and well-being of both citizens and pilgrims during that time, with the greatest willingness, striving to

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ensure that no one in the City lacks anything that may be useful for religion, virtue, or piety. But just as those who are more seriously ill are usually attended to with greater care by those nearby, and they strive by every means to bring them to healing, so too are We more moved by the condition of those who are more deeply burdened by the diseases of the soul, that is, by sins and vices. To cleanse the stains of conscience through penance, and to restore the grace of Almighty God through the restoration of virtues, is indeed the most proper fruit of the Jubilee. For this reason, mindful of our office and charity, to those who desire to be freed from the bonds that hold them and to return to health, We shall, as far as it is in Our power, strive to lessen difficulties and to make the path clear, namely, with the supreme authority interposed. Following this plan, which Our predecessors have been accustomed to observe at a similar time, We too have judged it necessary to increase the number of confessors, and to extend the power of their ministry. But since such a part of the pontifical office must be administered properly and prudently, and it is necessary that the limits and the use of the faculties available be clearly defined, therefore, adhering to the Constitution "Convocatis," in which all that is necessary in this matter is clearly and absolutely prescribed, by Our own decree and with certain knowledge, and by the fullness of Our apostolic power, We command and order that the entire matter be arranged and directed in the manner prescribed in these Letters. I. To Our Venerable Brother, the Cardinal Major Penitentiary, We entrust and command, by these presents, that, according to the memo-

[*Latin ed. p. 266*]

266 By Apostolic Letters, Pope Benedict XIV confirms the Constitution, beginning with the words "In Apostolicae Poenitentiariae Offitio," whereby, in addition to the minor penitentiaries established in the four basilicas of St. John Lateran, St. Peter's in the Vatican, and St. Mary Major, a similar penitentiary is also designated for the basilica of St. Paul outside the walls of Ostia, for the entire Holy Year, and whereby, furthermore, other penitentiaries, already chosen or to be chosen by him, both in the aforementioned four basilicas and in all other churches, whether secular or regular, and especially, as far as possible, in the churches of various nations within the city, are likewise designated, and their number is abundantly increased. II. Furthermore, to these penitentiaries, whether in the four basilicas or in other churches of the city, appointed by the Cardinal Major Penitentiary, as is customary, or appointed during the course of the Holy Year, we grant and bestow, from the fullness of Apostolic power, the following faculties, which shall last only during this Holy Year: III. They shall be able to, by themselves alone, and only in the forum of conscience, absolve all those who confess to them, even religious and regular individuals of whatever Order, Congregation, or

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Institute (even if, by the prescription of their Superiors, or by their own Constitutions, even those approved by the Apostolic See, or otherwise by an indulgence, decree, or precept of the Holy See, they are forbidden to confess their sins outside their own religious order), from all sentences of excommunication, and from all other ecclesiastical censures, even those reserved to the Supreme Pontiff and the Apostolic See in any way, even in a special manner, as reserved in the Constitution "Apostolicae Sedis," as well as from all sins and excesses, however grave and enormous, even those reserved to the Apostolic See, provided that salutary penances, and other penances legally prescribed to those who are absolved, are imposed upon them. Except, however, for the crime of absolution of an accomplice, which has been admitted three times or more. IV. Furthermore, they shall be able to absolve from the aforementioned censures and sins, for which the faculty has been granted in § III, those who are contrite, even if the censures to which they are subject are public, in the places from which they came, and even if they have been publicly declared or denounced in those same places by the Ordinary, or by any other judge; provided, however, that the penitents are warned about the "libellus," as mentioned below, so that in these public cases, the Apostolic Penitentiary may be informed. After absolution, indeed, a petition ("libellus") shall be prepared, stating the name, surname, and diocese of the penitent.

[*Latin ed. p. 267*]

APOSTOLIC LETTERS, 267, and in the case of someone subjected to this type of public censure, and below, they shall write a testimony of the absolution granted from that censure, and they shall direct the penitent to the Apostolic Penitentiary Office, so that he may receive a Brief of dismissal, or of absolution, according to the practice of that same Apostolic Penitentiary Office. However, heretics who have publicly proclaimed dogmas, shall not be absolved, unless, after abjuring the heresy, they repair the scandal, as is fitting. Those also, who have given a name to forbidden Masonic sects or others of the same kind, if they are hidden, may be absolved, with the legally prescribed penances imposed; but if they are not hidden, they may indeed be absolved in the same way, provided that they also repair the same scandal. V. They may absolve from a censure pronounced by a person or by any judge concerning specific matters, only for the internal forum, so that for the external forum, that absolution will not be valid in any way. VI. Those who have acquired ecclesiastical goods or rights without permission, shall not be absolved, unless they restore them, or unless they settle the matter, or sincerely promise to settle it with the Ordinary or with the Holy See. VII. They may dispense with all and each simple vows, even those reserved to the Apostolic See, even those sworn, by granting a dispensation for other pious works. VIII. However, they may dispense with a vow of perpetual chastity only because of the danger of incontinence leading to

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marriage, warning the penitent that he will incur the penalty against the vow if he offends outside of marriage; therefore, he will remain bound by the same vow of chastity as before, if he survives his spouse. — If that vow has been emitted before the completed sixteenth year, and has not afterwards been considered as a ratified vow, they may absolutely dispense with it, changing it, if there is a just reason; in this matter, confessors are burdened with conscience. IX. They may dispense with a vow of entering or professing a religious order, in order to lead a life of celibacy in the world, because of the aforementioned danger of incontinence; but if the penitents reasonably believe that they can bear the obligations of the religious order, or if they lack a sufficient dowry to enter the religious order. X. They must remember to abstain from the fruits of those vows.

[*Latin ed. p. 268*]

268. APOSTOLIC LETTERS concerning dispensations, in which the matter of the impediment of the third party is discussed. Therefore, in matters pertaining to vows, whether simple, or of perseverance, or others commonly made in a Congregation or Community, and vows obligating a third party, no dispensation should be granted. They should likewise abstain from dispensing with a vow of non-gaming, especially with regard to ecclesiastical, secular, or regular persons; but with regard to others, if, considering the condition of the persons and circumstances, a just reason for dispensation is presented, they should only grant it in such a case, except for games otherwise prohibited in any way, and furthermore, with those conditions prescribed, so that the game permitted by the dispensation may be conducted honorably. Nor should they act differently with regard to penal vows, or those intended to restrain from sin, lest an opportunity for freer sinning be given. But if, perhaps, such circumstances arise that merit a dispensation, they should certainly not grant any other than that which, no less than the original matter of the vow, restrains from committing sin. XI. They may grant dispensations with regard to constitutions concerning irregularity due to a hidden crime, except for voluntary homicide. XII. With those who, knowingly or unknowingly, have contracted marriage with an impediment of the second and third degrees, or the third degree alone, or the third and fourth degrees, or the fourth degree alone, of consanguinity, or of affinity even arising from a licit marriage, as long as such an impediment remains hidden, they may grant a dispensation for the sake of conscience alone, to remain in the marriage. XIII. Similarly, for the sake of conscience alone, they may grant dispensations regarding a hidden impediment of diriment consanguinity, whether of the first and second degrees, or of the first degree alone, or of the second degree alone, arising from a marriage contracted in violation of the law; and also, provided that grave and canonically sufficient reasons are present, in contracting marriage; but in such a case, if such consanguinity arises from a mar-

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riage with the mother betrothed, or to be betrothed, the birth of that child must have preceded the marriage, and no other condition. XIV. They may likewise, for the same purpose, grant dispensations, both with regard to a marriage already contracted, and with regard to contracting marriage, regarding spiritual affinity, and also regarding a hidden impediment of a crime, in neither case involving a conspiracy, that is, when only adultery and a promise given regarding a marriage to be contracted after the death of a spouse are present. XV. They may grant dispensations to request the debt in the case of incestuous affinity arising after marriage.

[*Latin ed. p. 269*]

XVI. It is permissible to grant dispensations to those who, having taken a simple vow of chastity, have entered into marriage, provided that they are reminded that, if they sin outside of the marital act, they will violate that vow, and that they will remain bound by the same vow as before, if their spouse survives.

XVII. Regarding the visitation of the four Basilicas by foreigners, it is permissible to grant dispensations to those who, either due to poverty or some other serious reason, are unable to remain in the City, either by reducing the number of visitations of those same Basilicas to at least three days, or by requiring that they be visited within ten days, or by substituting the prescribed visitations with other pious works, each person exercising his own prudent judgment.

XVIII. However, for citizens and inhabitants of the *romans*, who, due to illness or some other legitimate impediment, are unable to visit the aforementioned Basilicas, it is permissible to grant a dispensation to substitute the prescribed visitations with other pious works, which they can fulfill within twenty days: but they will burden their own conscience if they have obtained a dispensation, without consultation and without a just and reasonable cause, either with foreigners or with *romans* citizens or inhabitants.

XIX. Furthermore, all other faculties previously granted to the Penitentiaries of the aforementioned three Basilicas, or perhaps to be granted by the Cardinal Major Penitentiary through the general faculties, by which he is instructed by the Constitution of *Benedict* XIV, "I am the good shepherd. The good shepherd giveth his life for his sheep." or by others from the Holy See and from Ourselves, are to be maintained and remain firm in this Jubilee year, and during this year they should be exercised towards all, just as at any other time, according to the terms of the same Constitution and other respective concessions, and We decree and declare that it is permissible.

XX. We confirm and grant to the aforementioned Major Penitentiary, and to the Apostolic Penitentiary Office, as the case may be, all those faculties, both those mentioned in the aforementioned Constitution of *Benedict*

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XIV, "Pastor bonus," and others also granted by the Apostolic See or by Ourselves to the Cardinal Major Penitentiary, as well as those expressed and contained in the present Letters, for this Holy Year, so that the Major Penitentiary may, through himself and through any confessors he chooses, lawfully use them for all and each person in the City. If, however, any cases are presented to him...

[*Latin ed. p. 270*]

270 APOSTOLIC LETTERS. The Penitentiary Office, or it may happen that a case, of those mentioned above as pertaining to the Penitentiaries or Confessors, which has not been provided for in these Our Letters, or which are excepted therein; it is the duty of the aforementioned Major Penitentiary, to whom the aforementioned minor Penitentiaries and Confessors properly present various such cases, to consult with Our Apostolic authority regarding them: and We, for Our part, shall not fail to prescribe whatever We shall deem fitting in the Lord, so that suitable remedies may be offered to heal the wounds of souls. XXI. Since We understand that, in order to obtain greater spiritual benefits this year of holy redemption, and to increase the number of workers, as the harvest is growing, We, following in the footsteps of Our Predecessors, entrust to Our beloved Son, the Cardinal in the City, and his General Vicar in spiritual matters, that he may designate as many as possible, or, if he deems it better, all, from among the Confessors, both Secular and Regular, whom he has already approved, or shall approve, to hear confessions, so that they may freely exercise the following faculties during the course of the Holy Year, so that they may more usefully labor in the performance of this most holy ministry. XXII. Therefore, these Confessors may, by themselves alone, and only in the forum of conscience, absolve those who confess to them, except for religious or regular persons who are forbidden to confess outside of their own Order, and from whom, as well as from all ecclesiastical censures, even those reserved to the Supreme Pontiff and the Apostolic See, even in a special manner, in Constitution "Apostolicae Sedis" (provided, however, that such censures are not public), and also from all sins, however grave, even those reserved to the Apostolic See; provided, however, that salutary penances, and other things that are legally prescribed to those who are doing penance, are imposed upon them. — Except, in the same manner as above in § III, for the crime of absolution of a complicit. XXIII. All and each simple vows, even those made under oath, even those reserved to the Apostolic See, may be dispensed with, and changed into other pious works. XXIV. They may dispense with regard to the prescribed visitations to the four Basilicas, and may change them in exactly the same manner as is granted to the Penitentiaries in §§ XVII and XVIII. Furthermore, let them

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know that no other faculty of dispensing with anything is granted to them.

[*Latin ed. p. 271*]

LETTERS APOSTOLIC 271 XXV. Furthermore, We wish that the faculties previously granted, which perhaps have been or will be obtained by the Holy See through the Sacred Penitentiary or by some other legitimate means, remain in full force for each individual. XXVI. Let all, both minor Penitentiaries and other confessors, understand that, with respect to those to whom they are assigned, they cannot exercise these broader faculties, granted by the present Letters through the indulgence of Apostolic benevolence, except with those penitents who sincerely and seriously desire to obtain the present Jubilee, and who, from this intention of mind, approach them for confession, and to fulfill all other necessary works for obtaining it, and that they cannot use these faculties with those penitents who have already obtained the benefits of this Holy Year. XXVII. Furthermore, desiring to provide more abundantly for the benefit of the Religious, and to increase the number of confessors, in accordance with the custom of the Jubilee, having considered the aforementioned faculties, which We recently established to belong to the confessors designated by the Cardinal Vicar this year §§ XXII, XXIII, XXIV, We grant all of these, both individually, for the same year, to all regular or religious confessors, even in Institutes of simple vows approved by the Apostolic See, who have been duly appointed, according to the norms of each Order or Institute, for the purpose of hearing the confessions of their religious, so that these confessors may freely and lawfully exercise these faculties towards only the religious of their own Order or Institute who desire to obtain the benefits of this Jubilee, in their respective monasteries or houses. To these religious confessors, We also grant and bestow, by virtue of the present Letters, the faculty of dispensing with the same religious penitents in the sacred Orders established concerning irregularities contracted through a hidden fault, as has been granted in § XI, for the sake of the graces of this same Jubilee. XXVIII. We also turn Our paternal care towards those who, for a legitimate reason, are hindered from fulfilling the decreed visits to the four Basilicas, such as, in particular, nuns, and other virgins, or women living in perpetual enclosure, or oblates, and others residing in religious or pious houses, or conservatories, as well as those detained in prisons or custody, and those afflicted with illness: for others, We shall determine, by Our special Letters, what is more expedient to do in the Lord.

[*Latin ed. p. 272*]

272. APOSTOLIC LETTERS are issued, so that those also may partake of the aforementioned absolutions and the plenary Jubilee.

XXIX. Since Our Predecessor, the blessed and revered Benedict XIV, having demonstrated the most salutary admonitions concerning the proper

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use of the faculties of this kind, for which he was renowned for his expertise in sacred matters, in his Letters, which begin with the word "Convocatis," we have ordered that these be read separately again, so that those who are entrusted with assisting the souls of the faithful through the Sacrament of Penance may draw from them a rule, by which they may religiously compose their plans and judgments in this difficult task. Therefore, we wish that all confessors, who intend to make use of the granted faculties, diligently read and consider these, lest, through ignorance of things, they sometimes discover, to their bitter sorrow, that they have deviated from the right course in a most important matter.

XXX. Meanwhile, we affectionately admonish all those sacred ministers to whom such an important office is entrusted, that they perform it properly, and, as is fitting, with piety, charity, and prudence; and since we see the children of the Church groaning under the flood of increasing errors, carried along by every wind of doctrine, they must, above all, teach all the ways of the Lord, and lead them away from that wisdom which is not according to God. Let them receive all with an even and patient spirit, strengthened by the example of Him whose person they are called to represent. In this way, when the penitents see the treasury of heavenly graces and the bowels of mercy opened to them on all sides, they will be more eager to turn to the Lord, and diligently strive to reconcile themselves to Him through the Sacrament of Penance.

Furthermore, we decree that these present Letters, and all the concessions, limitations, admonitions, declarations, and the expressions of Our will contained therein, may not be impugned or contradicted in any way, but that they shall be considered valid in every respect, and that they shall be scrupulously observed by all to whom they pertain, and that We will fully support and favor, and decree, those also to whom they pertain, respectively.

Notwithstanding Our preceding decrees, and other Apostolic Constitutions and Ordinances, whether issued in Universal, Provincial, or Synodal Councils, and also concerning any persons, or orders, even mendicant orders, congregations, societies, and

[*Latin ed. p. 273*]

273. APOSTOLIC LETTERS, which merit special and individual mention, even those confirmed by oath, by Apostolic confirmation, or by any other means of strengthening, concerning statutes, laws, customs, and usages, even those of long standing, as well as Indulgences and Privileges under any terms and forms; and any suspensions and derogations, or other clauses that are more effective, or nullifying decrees, even in a similar manner, with full knowledge and authority, and those that have been granted and repeatedly confirmed, and renewed. All and each of these, insofar as they are recognized as being in opposition to the present document, shall

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remain valid in their full force, but for this occasion only, most broadly and widely, and especially and expressly, as if their terms were fully inserted in the present document, we derogate from them, and we declare that they are to be considered as derogated, and we decree. Therefore, it is not permitted to any human being whatsoever to infringe upon this page of Our concessions, limitations, warnings, declarations, mandates, decrees, and will, or to dare to contradict it with reckless audacity. But if anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul. Given at Rome, near St. Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and ninety-nine, on the twelfth day before November, in the twenty-second year of Our Pontificate.

C. CARD. ALOISI MASELLA PRO-DAT. – A. CARD. MACCHI.

Visa DB CURIA

I. DE AQUILA E VICECOMITIBUS

Loco >ß Plumbi Reg. in Secret. Brevium

I. CUGNONIUS.

Acta, Tom. XXXII. fase. CCCLXXVII. 18.

[*Latin ed. p. 274*]

FROM THE HOLY CONGREGATION OF THE COUNCIL • IN TREVES. REGARDING THE NULLITY OF MARRIAGE. July 22, 1899. Session 24, Chapter 5, Concerning Reforms of Marriage. SUMMARY OF THE CASE. John Peter, being thirty years of age, having his first wife deceased, on March 23rd of the year 1886, in the town of Mayen, in the diocese of Treves, validly entered into marriage with a certain Catherine, then being thirty-five years of age; after the betrothed had lived together for approximately three weeks prior to the celebration of the marriage. However, this marriage, begun with mutual affection, is now challenged by the husband, who asserts that it is null because of a lack of consent on the part of the wife, who had long since shown signs of a lack of sound mind, and who, during the very marriage ceremony, suffered from such a mental defect that she was not of sound mind. What is true in this matter will be judged by the Most Eminent and Reverend Fathers; however, it seems certain that five days after the beginning of the marriage, the woman was seized by such a frenzy and insanity that, with the intervention of public authority, it seemed advisable that the husband abstain from any familiarity and cohabitation with his wife; indeed, on May 8th of the same year, Catherine was received into the home of relatives, where she now resides, and there

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is no hope of any medical recovery for her health. Meanwhile, Peter, in the year 1894, obtained a favorable judgment for divorce from the civil tribunal due to the nullity of the marriage, and on April 9th of the year 1895, with impious audacity, he entered into a civil marriage with a certain Agnes, and from this concubinage he became the father of three children. However, desiring to appease his troubled conscience, he approached the Curia of Treves, requesting that a process be instituted concerning the nullity of the marriage contracted with Catherine.

[*Latin ed. p. 275*]

TREVES. 275 tharina. Indeed, the Treves Tribunal instituted a process, examined the man, and heard numerous witnesses, who not only gave testimony favorable to the man's truthfulness, but some testified that, at the time of the marriage, the woman suffered from a mental infirmity. Certain physicians were also examined, among whom was the testimony of Doctor Nobel, which is entirely found in the records. But the judge of Treves, after considering everything, on June 30th of the year 1896, rendered this judgment: "It does not appear that there is any nullity of the marriage." However, the plaintiff in this case did not rest, but, in a second instance, he appealed to the Tribunal of Cologne, which, after again examining the matter on December 28th of the same year, rendered this judgment: "Considering 1. That the witnesses, without any exception, and clearly worthy of all belief, testified under oath that Catherine, even before the marriage, suffered from dementia, and that on the very day of the marriage, she gave undeniable signs of dementia. 2. That expert physicians, from the signs of dementia, concluded that Catherine was of unsound mind at the time of the marriage, and therefore, suffering from an incurable state of madness: We judge and declare: I. The judgment of the first instance is not to be upheld. II. Considering Chapter 24, X, 4, 1, the marriage between Peter and Catherine is null. In the Tribunal of Treves, the cause of nullity was proposed due to a lack of free consent, and this was discussed in the first instance (for all things were properly carried out) and decided by a judgment rendered on June 30th of the year 1896, which stated that there was no nullity in the aforementioned marriage between Peter and Catherine. However, an appeal was made to the Metropolitan of Cologne, who more thoroughly examined the matter in the second instance, and decreed that the said marriage was null from the beginning, and therefore, the judgment of Treves was not to be upheld.

[*Latin ed. p. 276*]

276. From the Disputation of the General Council: He who undertakes the task of theological discussion should immediately state what he believes, namely, that the marriage is null in this case, as the Court of Cologne has rightly judged, and that the judgment rendered by the Court of Treves

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should be overturned. To accomplish this, we shall proceed in an orderly manner, so that it may be understood what the facts reveal concerning dementia, then what rights are involved regarding the validity of an act celebrated with such dementia, that is, whether such dementia produces nullity. In the first place, three periods must be clearly distinguished: namely, the time before marriage, the time after marriage, and the time simultaneous with the celebration of the marriage. And although it may suffice to demonstrate that the person was demented in the last period in order to declare the act null, yet it is necessary to proceed with greater certainty in this matter. I said "with greater certainty" not because it is uncertain whether the period or time of the dementia was in the middle period: on the contrary, we assert that it is most certain, and we proceed to prove it, first indirectly, and then through more well-known signs, which are the signs given before and after, and then directly through the very rite of the marriage celebration. However, it must be permitted that 1) although properly and strictly, a demented person differs from a madman, they are often used as synonyms, so that dementia is confused with madness, and especially when the validity of marriage (and generally of any act) is at stake, the terms are used promiscuously to exclude in any way that consent which the Pope says is necessary for marriage to be full and free; 2) it is difficult to prove that someone is a madman, and it is not directly possible to prove it from the fact that madness consists of intelligence, nor can a witness perceive it through the senses. Therefore, it remains to be demonstrated that someone is a madman through conjectures and presumptions, as is done with the actions and words of fools: which proceeds, although the person may seem prudent in words, for if the actions reveal the fool, "such a person must be judged to be a fool": provided that such signs are present. OPINION OF THE THEOLOGIAN.

[*Latin ed. p. 277*]

TREVIREN. 277, so that they may come together in a furious manner; nor should they touch a man of sound mind. Mascard, *De Prob*, concil. 824. Immediately after the celebrated marriage, many witnesses attest that signs of dementia appeared. Already on May 8, 1886, she was taken to the provincial asylum for the insane in Andernach, and remained there until April of the year 1889; from there, she was taken to the asylum for the insane at Klosterhoven. Furthermore, from the very first day of her deportation, she has been declared insane and furious by experts, and incurable. This disease is such that it does not allow for any lucid interval; as testified by D. Reuter to ecclesiastical authority. Indeed, Catherine, upon returning home after the celebration of the marriage, immediately removed the crown from her head and the wedding ring from her finger, slept the first night with her sister, wore shoes from the very first night, showed no care for her husband, and from the very first day pursued him with insults and indecent words,

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sought him with a knife and an iron rod, undressed immodestly before others, sang obscene songs, and committed many other such acts, until her incarceration and deportation to the asylum for the incurable insane, thereby demonstrating a manifest and continuous dementia. However, for such a condition to erupt on that day, such dementia could not have arisen suddenly, but must have existed previously in the woman. For nature does not allow for a sudden change. Therefore, it is clear that Catherine was already suffering from dementia immediately before, which manifested itself more clearly on the occasion of her new status, namely marriage, a few days before, both civilly and religiously. Especially in women who are violent, quarrelsome, and attached to others with a bloodthirsty nature, a furious disposition is often present. This is further evidenced by the opinion of three experts, who assert that she had an innate fury. Therefore, we can rightly conclude that Catherine was already demented before the sacred ceremony of marriage. It is clear in multiple ways that Catherine was insane for at least several months before the marriage celebration: in a certain year of 1885, she desired to receive the last sacraments; like a sick person.

[*Latin ed. p. 278*]

278. From the Sacred Council, she lay in bed, and ordered the physician and the parish priest to be summoned. Before they approached her house, she began to wander through the streets and squares, then returned home and, like a mute person, awaited and received the parish priest, who, together with the physician, observed Catherine's deranged state of mind and alienation. They recalled another incident, namely, that immediately before her marriage, Catherine had instituted a lawsuit against a certain William, alleging that he had intended to commit an outrage against her; but the judges, seeing that the accusation was evidently false and unjust, and that the accuser's character was entirely unworthy of belief, immediately dismissed the case. Similarly, in the autumn of the same year, 1885, Catherine was in such a state that, having contracted a marriage with Matthias Scheuren, after all the announcements had been made and everything was prepared for the wedding, the aforementioned Scheuren was compelled to break off all negotiations for the marriage, because Catherine, a few days before the wedding, entered the groom's house together with her father, and began to sing the most obscene and scandalous songs, so that the honest groom, first disgusted, then completely abandoned her, as Scheuren himself swore. This obscene singing in a woman who was recognized as a religious person by her parish priest, as well as the display of indecent behavior immediately after the marriage ceremony, certainly indicate complete dementia. As the day of the marriage with Peter approached, her mental state worsened. She appeared depressed in spirit and frequently, like one despairing, begged for death, without anyone causing her any distress, according to the

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testimony of Geisbych, Catherine. This is corroborated by Nicholas Meurer and Elisabeth Knauf. But what is the significance of all these witnesses before the celebration? Certainly, they testify to Catherine's dementia, not as a sudden occurrence, but as a continuous condition before the aforementioned celebration. Therefore, also during the celebration itself. The preceding statements make this clear, and it is confirmed by the opinion of experts, as we heard earlier from Doctor Rollin, regarding the nature of alienation. Furthermore, these and similar signs are certain indications of immediate...

[*Latin ed. p. 279*]

TREVIREN. 279. Before marriage, they assert that there is certainly a continuous affection, both during and after the marriage; because nature does not tolerate a sudden change. These phenomena, if they claim a continuous madness during the aforementioned weeks, were also present at the time of the celebration: for, as Mascard states in *De probatione conciliationis*, 825: "One who is once furious is always presumed to be furious... because such passions and movements are presumed to persist unless the contrary is proven... especially in the passion of anger, which does not usually recede so easily... for nature does not tolerate a sudden change." Thus, Mascard, in accordance with common understanding, adds another rule: that what is usually the case is always believed to be the case, and that a person who is presumed to be furious is always presumed to be furious, when it has been proven that someone was furious for a continuous period of time. The acts of a madman, which are not shown to have had lucid intervals, are presumed to have been committed during the period of madness. It should be added that, previously, namely, the very consanguinity and birth from such individuals, especially those descended from them, reveal a flaw in nature: and madmen never recover from this flaw in nature, as Zaccharias holds in *Quaestiones mediae, legales*, I. 2, title 1, question 26, number 3, and therefore they constantly suffer from madness, so that this is entirely presumed to be the case at the time of the marriage celebration, as established in the decisions of the Rota, 2, number 5 and 12; and decision 5, number 5, 6, after Zaccharias, *Quaestiones mediae, legales*. Objections against this period of madness are: 1) Almost all parents and many outsiders did not notice the insanity before the marriage; 2) Indeed, the groom himself did not notice it; and furthermore, there are contradictions with witnesses who testify about the insanity, and who dissuaded him from entering into the marriage. Response: a) Outsiders may not respond about the same time; or if they deny it, there is nothing surprising: because these people do not want to involve themselves in giving testimony against a contentious, quarrelsome people, as was always the case with the tribe of Reuben. That consanguineous relatives, when questioned, said the contrary, is also something that one should not be surprised by, since, due to the communion

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of blood, they are easily deceived. Hear the words of Doctor Maria Brá, chapter I, 8.

[*Latin ed. p. 280*]

280 FROM THE QUESTION POSED TO THE CHURCH COUNCIL: "Before arriving at a diagnosis, the physician must often overcome numerous difficulties. These difficulties often arise from the family, which is unable to recognize in the actions of the patient the existence of mental derangement, and therefore has a natural tendency to downplay, to mitigate, or even to deny even the most obvious psychological disturbances, the changes that have occurred in the patient's character, and the aberrant behavior to which the patient has given himself." Regarding the response, I say that Peter is unrefined, simple, and dull, as noted by the defender in the second instance, who is seeking a wife, a woman from whom he hoped to obtain a solution to his debts; for him, denial was easier than affirmation, lest he be reprimanded for having proceeded to marriage with a woman whom he had previously recognized to be insane. Therefore, the reason for the denial must also be sought, namely, that no witness had advised him to abstain from celebrating such a marriage. However, he does not deny, but under oath affirms that he saw signs of insanity at the time of the celebration, and that he confessed this to a priest. Furthermore, in the countryside, those who are uneducated believe that someone is insane only if they exhibit complete madness with loud outbursts, and they find it difficult to perceive those who are insane but who may appear to be sane, while the foolish remain quiet. For not always does insanity manifest itself outwardly through the same signs, especially when it is congenital, and the mind ordinarily appears to be clear. The lawyer swears that during the period of cohabitation, he noticed the dementia. Testimony could be offered by a cleric or sacristan, whom they call, who saw everything at the time of the celebration and considered Catherine to be demented. But the most important and indeed solemn witness who should not be overlooked is Mr. Dunkel, the sacristan, who performed the marriage ceremony and saw signs of dementia. Therefore, during the marriage ceremony, Catherine H. was clearly demented. This period of dementia is also confirmed by Doctor Noël after a thorough examination. Therefore, she was suffering from the same mental illness on March 23 of the same year, 1886.

[*Latin ed. p. 281*]

TREVIREN. 281: Where, before the parish priest and two witnesses, in the presence of the Church, a marriage is being investigated. The aforementioned experts attest to a continuous infatuation, which has been outwardly manifest for three or four weeks prior. It must also be added that the cause or occasion of the fury was, in a large part, the very act and matter of marriage itself, as was demonstrated after the beginning of the

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marriage, by exposing immodest parts before all, and furiously seeking the procreation of offspring. We are dealing with a woman of strong passions, vehemently desiring to find a husband; who, after finding one, after only two announcements, does not wait for a third, and begins to cohabit with the bridegroom, especially at night; what wonder, then, that on March 18th, more manifest signs of derangement would appear? The passion of love, and especially the desire for obscene things, generally affects women with a certain fury; what will happen if the woman is very passionate, already possessing from nature a hidden vice of fury? Therefore, at the very moment when she approached, whether for the civil or for the Holy Nuptials rite, she must have been seized by greater fury, rather than possessing a lucid or fury-free interval. Therefore, to the objection: Whatever may be the reasons presented, it must be proven that Catherine lacked a lucid interval at the time of the sacred rite. Answer: The nature of the fury recognized by the experts, and proven for the 1st and 3rd periods, excludes a lucid interval by itself. Therefore, a fortiori, the arguments presented for the time of the celebration exclude it. Cf. Doctor D'Anguessau, in Merlin, repertorium di giurisprudenza, V, Demenza § 1. However, in this case, no contrary quality has been proven; indeed, at the time of the celebration, manifest signs of a disturbed mind are present. This must be said even more of a woman who suffers from a continuous infatuation, or a vice; as the aforementioned experts, highly esteemed for their experience, acknowledged. The secular and ecclesiastical tribunal, in the 2nd Instance, recognized a true dementia in Catherine at the time of the marriage; therefore, the secular court proceeded to declare a full civil divorce, and the ecclesiastical judge of appeal considered that there was no marriage whatsoever.

[*Latin ed. p. 282*]

282. Furthermore, the ecclesiastical court of Treves does not object, stating its contrary opinion as to the validity: "Although it may be argued that Catherine at that time exhibited both a hereditary disposition towards dementia and frequently displayed signs of being mentally deranged, nevertheless, during the celebration of the marriage, she was not demented, and this was proven with prudent certainty." However, it itself acknowledges that a hereditary disposition, or a defect of nature, often leads to dementia; and, according to experts and learned doctors, dementia arising from a defect of nature is to be presumed continuous, unless a clear interval is proven. Therefore, contrary to the court of Treves, it must be concluded, with prudent certainty, that when it has been proven that madness preceded, the person is always presumed to be mad, even if they have lucid intervals, unless the very act in question was performed in such a way that no sign of folly can be derived from it; but, as has been demonstrated above, Catherine displayed signs of folly immediately before, on the day of, and during the celebration of the marriage. Cf. *Masc.* I, chapter, numbers 10 and 13.

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Indeed, Abbot [in *C. S.*, as stated in number 3 of the *Regulations*], and others, teach that a mad person is not presumed to be of sound mind, even if they act correctly, such as when entering a monastery, or when testifying as if wise, or when establishing a pious cause as heir: because, they say, if the act performed, such as a will, is correct in its disposition and consistent with reason, it nevertheless appears to be done by chance, and is not considered to originate from the sound judgment of the one performing the act, as was answered in *I. C. in I. Iff. de testam.*, and as was decreed by the Imperial Institutes, § [reference]. Furthermore, from the above, it is easy to respond to the objections raised by the Defender of the Bond in *II Inst.*, who says that true insanity must be distinguished from dementia, which concerns only one thing or another, and from temporary dementia: Catherine did not suffer from the latter before the time of the celebration. Response: This distinction is not to be admitted, especially in the case of Catherine: because she performed certain easier and more common duties of life through habit and custom; and such is not the case.

[*Latin ed. p. 283*]

REVIREN. 283. Those who are insane are usually observed to exhibit certain actions from which evil consequences follow. A person is not presumed to be of sound mind, as we have just said, if he has already shown many signs of insanity, as happened with Catherine before the act in question: whose insanity was proven to be continuous even before March 18, 1886; therefore, she is always presumed to be insane. Nor do Doctors of Law and experts distinguish, especially in a particular case, between general dementia or madness. If there is always a fixed, disturbed idea in the mind, it would be called *fissazione* in Italian, and not *pazzia*. Every person is presumed to be of sound mind in law. The respondent is presumed to be of sound mind if he has previously always been of sound mind; and in case of doubt, nature presumes in favor of sanity. Conversely, when there are many certain signs of insanity preceding the act, indeed, even in the act itself, it is clear that the person was not of sound mind. She denies that the insanity was hereditary. The respondent. And this is wrongly denied, contrary to the truth, since her sister spent several months in an institution for the mentally ill, her brother attempted to take his own life, and, most importantly, her grandmother was completely and incurably insane. In fact, she did not show signs of insanity during the years she lived in her village, where she lived for 35 years, and all the witnesses, who are numerous, when questioned, testify that they did not notice that Catherine was insane; at most, they say she was quarrelsome, contentious, and affected by melancholy. It is one thing to say that they did not notice, and another to affirm that she was not insane. They say, "I did not hear," "I did not notice." The difficulty lies in the fact that it concerns the years around 1885, when she sang outside the choir; but our question is about the

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insanity and madness that she showed around the year 1886, and especially from March 18 of that year onward. Furthermore, among these witnesses, there are several relatives; others did not notice because they did not want to have anything to do with such a person. And what is said about her being quarrelsome certainly suggests insanity; and anyone who has had the courage to visit the Kloster-Hofen hospital, for example, will easily convince himself of this; indeed, a large proportion of these women are completely insane. Cf. *Advoc. 2. Inst.*

[*Latin ed. p. 284*]

284 FROM THE DECREE OF THE COUNCIL OF TRENT. "Every assertion, especially that of experts, is based on the testimony of two or three uncertain witnesses."

Response: 1) The witnesses adduced, especially for proving dementia, which existed for at least one month prior to the marriage, and at the time of the marriage celebration, are, in every case, considered sufficient. More and better-known witnesses could not be questioned because, after a long time, they are now deceased; therefore, those who survived and were associated with such individuals were questioned, and their testimony is sufficient; nor is the testimony of a seventh witness required in such circumstances. Furthermore, Doctor Noël and others do not rely solely on the testimony that would, by itself, be sufficient to prove dementia at the time of the ceremony; but rather, they rely on the things that were testified to have occurred immediately before and after the marriage, and on the nature or character of the manifest, hereditary, and incurable dementia that appeared from the first day of the civil marriage ceremony in Catharina, and, with moral certainty, have justly earned the right to assert the dementia at the time of the marriage.

Question: Did Catharina, suffering from such dementia, validly contract marriage?

Response: Negatively, and therefore, the Metropolitan Curia of Cologne justly declared the said marriage null, and decreed that the judgment of the Episcopal Curia of Treves be upheld. For: 1) Canon 24 of the Code of Canon Law concerning betrothals, and elsewhere, require that the insane be separated, since legitimate consent cannot occur between those who are alienated by madness. But Catharina was, in fact, chronically insane, both before and at the time of the marriage. 2) Furthermore, the great contempt shown to her husband by publicly calling him a "scoundrel," and by striking him with an iron rod, and other such actions, beginning from the first day of the marriage, and by immodestly exposing herself before everyone, and by engaging in concubinage with other men, both of which demonstrate either utter foolishness or a state contrary to the essence of marriage, which is good faith and a sacrament; and therefore,

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true matrimonial consent is excluded.

[*Latin ed. p. 285*]

TREVIREN. 288 3) The laws and Doctors all say that those who are mad or insane cannot validly contract marriage, because full and deliberate consent is lacking, as cited above. Sánchez, I, 1, on marriage, D. 8, n. 15. Schmalz, in tit. de sponsal., n. 14; c. Cum locum 14 de sponsal. For marriage is contracted solely by consent, and where this is questioned, it must be established with complete certainty; the intention of the parties must be investigated. Therefore, it is clear that any voluntary and free act is not sufficient for consent, but rather, it must be entirely free, without any involuntary admixture. But such a voluntary and free act was certainly not found in the case of the insane Catherine, especially since greater knowledge and freedom are required in marriage. Furthermore, two consents must intervene in marriage, one from the contracting party with regard to the obligation, and the other from the party entering into the marriage with regard to the essence of the marriage. A consent must exist on the part of the contracting party concerning the three goods of the sacrament. But such a consent cannot even be conceived as having existed in the case of the insane Catherine on March 23, 1886. If uneducated women, born of uneducated parents, are found living among the uneducated, ignorant of the obligations, effects, and very bond of marriage, what if some of them suffer from insanity, or are simply insane? These would most easily be ignorant of all these things, not only inattentive, but laboring under error and ignorance, "as St. Thomas says, 1, 2, q. 6, a. 8, that ignorance deprives [one] of the knowledge required for a voluntary act: just as if someone is ignorant of some circumstance of an act, and therefore does something that he would not do if he knew." 4) It is consistent with Roman law, L. 20 ff. de Reg. Iur. It is sufficient to have alleged, as Donell does in I. XII, c. 22, n. 8, that "the mind is devoid of will in the insane..." "Indeed, it is clear that the insane have no judgment, and therefore no will in conducting business..." Concerning the insane, see L. Furiosi de reg. Iur., L. 1, § ult., ff. de oblig. et act... And what is said about the insane should be understood to apply also to the mentally deranged, even if they are not afflicted by madness.

[*Latin ed. p. 286*]

286 FROM THE HOLY GENERAL COUNCIL, which is denied in matters of governance, it is denied not for any other reason than because it lacks reason. Therefore, those who act are not bound, because, lacking understanding, they lack both will and consent. "No contract is made without consent." 5) This conclusion is supported by the judgment of both the secular and ecclesiastical tribunals: the secular tribunal, because, after thorough discussion and with the judgment of experts, it was established that

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there was a continuous and simultaneous state of madness when entering into the civil marriage; the ecclesiastical tribunal, namely, the Metropolitan Curia of Treves, in an appeal that overturned the judgment of Treves, after all due considerations and proceedings, declared the present marriage null, especially based on the following reasons: 1) Individual witnesses are sufficient to prove madness; 2) To enter into marriage, such a state of mind is required, at least, as is necessary to make a valid will; 3) The essential will for marriage includes the capacity to deliberate, not of any kind, but one that weighs the act itself and its effects on the one hand, and on the other hand, the omission of the act and the effects of that omission; 4) In cases of prolonged madness, if there is doubt whether an act was performed or not, one must assume that the act was performed while in a state of madness, and therefore is invalid. {See Sánchez). From the foregoing, it follows that those who defend the validity of the bond must prove that Catherine was of sound mind at the time of the marriage celebration; against them stands the strongest presumption, to put it mildly, which is sufficient in law to judge in favor of the nullity of the act: Cf. Cardinal De Luca, *De Testam.*, disp. 38: "nor does anything invalidate [a will] because the testator was mad," canon 26, C. 32, q. T, where at the end it is stated: "if madmen enter into marriage, they are not to be separated," which seems to imply that marriages entered into by such persons are valid, whereas those who are undoubtedly mad are to be separated. For these words must be understood in reference to madmen who entered into marriage while they were of sound mind; for if they were mad at the time of the contract, the bond is not—

[*Latin ed. p. 287*]

TREVIREN. 287. "The fury and madness that supervene must be considered; therefore, Pope Fabian rightly forbade them to be separated. This text provides the foundation for explaining this principle, where it is clearly asserted, 'Neither a madman, nor a madwoman, can contract marriage, because, as the Glossa states there, they cannot consent.' Even if some doubt remains, either given or not conceded, it cannot be raised to the axiom, 'Since marriage is a favorable thing, one must judge according to the value of the act; because such an axiom has its own exceptions or limitations.' I mention deceptions, illusions, etc., if any of these intervene and make the marriage doubtful; I come to the passage cited by Ursaya, *Disputationes Ecclesiasticae*, vol. 3, disputation 1, § 6, namely, when, it is said, 'marriage is not fully proven, and offers a) other considerations, as Angelus de Castro says... although marriage is favorable, the favor of marriage is not such and so great that it should be judged in its favor if it is not proven; because it is not to be judged even if it is semi-proven, since it is based on greater reasons...' The judges themselves in the cited case asserted that signs of dementia were present before and during the marriage; however, they say that not every prudent person would exclude the doubt regarding the actual act of

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copulation. But no prudent person would have any doubt if the consent had been fully and sufficiently proven. Therefore, one must not judge according to the value of the marriage. Cf. the observations of Advocate Steinmetz in the appeals to the Metropolitan Court, p. 6-7, who rightly concludes that to presume a lucid interval at the very moment of the marriage act, given the notorious madness before and on the day of the marriage, is contrary to the presumption of the law; therefore, it is incumbent upon the opposing party to prove the lucid interval. And John Ficard, *Consultations*, 38, no. 19: 'Indeed, if we consider the matter correctly, the favor of marriage does not consist in pronouncing in favor of the marriage immediately, and in forcing, against their will, as often happens, those who are unwilling to be joined together, where otherwise the legitimate consent and the contract of the marriage itself are not clearly and sufficiently proven; for from such a violent union, rather than the preservation, the devastation of marriages results.'"

[*Latin ed. p. 288*]

288 FROM THE HOLY COUNCIL, which itself teaches this through experience, which conjugal concord and love bring about. Furthermore, what kind of legitimate consensus is required in a case where it is not at all proven that Catherine committed a human act? I say, what kind of consensus is required for such a matter? And how did she commit a human act, when she exhibits so many signs of dementia? OPINION OF A CANONIST. Having stated the premises that pertain to the nature of the case, the Canonist says, "It is my duty to carefully examine the proceedings and to humbly render a judgment regarding the merits of the cause." Therefore, I have carefully read this lengthy process. And it seems to me that the acts, both in the first and second instances, substantially agree with the apex of the law. For here we are not dealing with a lack of consummation, but with the nullity of the marriage, a cause which could lawfully be investigated and annulled by the Ordinary of the place, without the consultation of the Holy Congregation, as was indeed done. Therefore, the Treves court, as a competent forum, judged this case in the first instance, strictly adhering to the Constitution of Benedict XIV and the Instruction of the Holy Congregation. Indeed, an examination of the wife, so strongly insisted upon by the law, is lacking in this process; but this defect occurred in the procedure, not through the fault of the judges, but through the moral impotence of the wife herself herself. Furthermore, this unavoidable defect was sufficiently remedied by the large number of witnesses, who, if two brothers of the wife are excepted, are considered worthy of respect by their respective parish priests for their probity of life and their faith. Therefore, from their testimony, the truth in this matter, which is so grave and so difficult to resolve, could conveniently be ascertained. I also observe that the process in the second instance was also properly completed. For the

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appeal to the superior judge, namely the Metropolitan of Cologne, was made by the Defender of Peter at a proper time and in the correct legal manner; and the cause was discussed and resolved before the court, as is evident from the records. These things, which we have touched upon concerning the process, are quite sufficient and more than sufficient.

[*Latin ed. p. 289*]

TREVIREN. 289. Now, it behooves me to explain the very substance of the matter. The rule of law is: "Without consent, the other party cannot complete the conjugal contract" (c. Tua nos, de spons.). Therefore, if there is a lack of free and full consent from both parties, the marriage cannot subsist. Furthermore, the consent required for the validity of marriage must proceed from a person who is of sound mind, enjoys full dominion over their actions, and who, after careful consideration and mature deliberation, freely gives their consent. Or, as Sánchez, in *De Matrimonio*, book 1, chapter 8, section 5, and other Doctors state, in the matter of marital consent, the consideration and understanding of the mind are required, as well as the deliberation of the will, which is necessary for making a will and for committing a mortal sin.

With this principle established, the question arises: Is a madman capable of giving a rational and completely free consent? Legal experts, to whom all theologians agree, answer this question with a resounding "no." For, as Saint Thomas teaches, "There cannot be consent where reason is lacking," and a madman is certainly devoid of reason (4 *Dist.* 34, q. 1, a. 4). Therefore, the Decretals, book 4, *De Sponso et Matrimonio*, chapter *Dilectus*, states: "But if a woman cannot live with the same man who is constantly afflicted with madness, and if, due to his madness, a legitimate consent cannot be obtained, we command that, if you know this to be the case, you separate these individuals from each other." The Glossa rightly notes: "Sometimes, however, the madman returns to a sound mind during lucid intervals, and if he contracts marriage at that time, it is valid." Therefore, a marriage contracted by a madman is valid, provided it is certain that, during a lucid interval, he gave his consent. However, certainty regarding such a lucid interval is rarely obtained and is often difficult to determine. Indeed, "often," as the same Glossa states, "madmen appear to be in a state of quietude, but are not of sound mind; and if a woman contracts marriage with such a person at that time, the marriage is not valid, and if this is proven, they will be separated." Therefore, Sánchez rightly observes in *De Sponso*, book 1, chapter *Aeta*, volume 32, page 377, section 19.

[*Latin ed. p. 290*]

290 From the Decrees of the Council of Trent, Session VIII, Decree 17; and from Barbosa, *Collectio Doctorum*, Book 4, Decretals, Chapter *Dilectus*, paragraph 26, number 5, which states that if a person is in a state of mad-

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ness and has lucid intervals, and there is doubt as to whether an action was performed during the period of madness or during a lucid interval, then, in such a case, it is presumed to have been done during the period of madness. The reason for this is that, since the disease of madness is by its very nature continuous, incurable, and hopeless, it is presumed to persist at all times, and those lucid intervals, because they are accidental, are not presumed to exist. However, they add, unless the quality of the action itself is such that it indicates that it was not performed by a mad person, it is presumed to have been done during a period of sound mind. Cf. Menoch, *De Praesumptionibus*, Book 4, Presumption 45, number 63. Furthermore, it should be noted, in accordance with the common opinion of the Doctors, that a marriage which is null from the beginning due to madness can be ratified and made valid by a new consent given by the same person, having regained their sanity, provided that the consent of the other party also endures. With these principles established, it remains to be investigated whether this doctrine is applicable to the present case. In other words, it must be determined whether Catherine was insane at the time, both before and during the celebration of the marriage, to the extent that the nullity of the marriage could be legally established due to a lack of consent. In this matter, as is evident, the crux of the question lies. To facilitate its understanding, the following matters must be carefully investigated and resolved: 1. What was the mental state of Catherine throughout her family history? 2. It is necessary to distinguish between different periods in Catherine's life, so that her true mental state may become more apparent: namely, it must be considered: a) the time that elapsed from the onset of her mental illness to the middle of the year preceding the marriage. b) the six months prior to the marriage. c) the very moment of the celebration of the marriage. In this way, if I am not mistaken, the state of the question is more clearly established, the apparently contradictory testimonies of witnesses are brought into conflict, and the truth in this matter, which is so obscure, becomes more evident. This matter must be treated with all possible certainty.

[*Latin ed. p. 291*]

TREVIREN. 291. I believe that Catherine was born into a family afflicted by a hereditary predisposition to madness. Indeed, her grandmother was struck with dementia around the age of seventy. James, Catherine's older brother, attempted to hang himself, and he never entirely escaped the mania of suicide and the instability of mind. John, another of Catherine's brothers, struck their eighty-year-old mother, beating her inhumanely and cruelly. Margaret, their sister, was driven to notorious insanity by lust, and she spent three months in a hospital for the insane; although she recovered from this infirmity, she nevertheless remained weakened. Finally, all members of Catherine's family, with the unanimous testimony

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of witnesses, are described as quarrelsome and foolish. These facts, asserted under oath by seven witnesses, clearly demonstrate, more brightly than the midday sun, that a lightness of mind and a disturbance of the intellect have persisted from the grandmother down to the present members of the family. It does not escape me that these facts might be explained differently by the Defender of the bond in the second instance. He says, in fact, that all of this does not indicate madness, but rather a predisposition to quarrels and a nature inclined to lust. But, even if this observation, let us suppose it is ingenious, is not improbable, the facts narrated neither contradict nor invalidate it. Even if, as the learned Defender says, the family, or, if someone prefers, Catherine and Jerome, have a nature inclined to quarrels and to lust, they also have a natural weakness... So what? Therefore, is Catherine not held by maniacal madness? The inference does not follow, because it is the opinion of experts in psychiatry that the signs, and not rarely the causes, of madness are as much related to lust as to anger. Therefore, it is quite probable that Catherine, and her brothers and sisters, have fallen into madness as a result of the cultivation of anger and lust. Whatever the learned Defender may argue, it seems to me to be justly maintained that there was a hereditary predisposition to maniacal madness in Catherine's family. Even more so, because this opinion is clearly favored by the doctors, by the Defender of the bond himself in the first instance, and by the judges of the first instance. Unfortunate Catherine, above all the others, was born with this hereditary madness.

[*Latin ed. p. 292*]

292 From the Sacred Council, the illness was recognized, by which, although she was not afflicted when she left her father's house, it seemed gradually, without apparent cause, to be developing in her. Indeed, all the witnesses who knew her from the earliest childhood, although they never observed any signs of madness in her, nevertheless, with one voice, declare that she was quarrelsome, spiteful, deceitful, lascivious, and immodestly frivolous. Therefore, it is impossible to doubt Catherine's particular predisposition to manic frenzy. For no one would dare to attribute such notorious vices, which the witnesses ascribe to Catherine, to the mind of a perfectly sane woman. Furthermore, it is added that the physicians who devote themselves to the study of Psychiatry unanimously affirm that, in any form of mental derangement, especially when it is hereditary, the morbid germ that lies hidden within gradually develops. And, according to the judgment of these experts in the art of Psychiatry, those phenomena which Catherine's witnesses unanimously observed from her childhood are considered as the germ of manic frenzy. (Cf. Secondo Laura, Medicina legale. Paranologia). Therefore, in our case, it is rightly defended that Catherine, although she did not suffer from insanity from the age of discretion until

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about six months before her marriage, nevertheless possessed a certain peculiar disposition of the mind which predisposed her to frenzy. Indeed, within this period of Catherine's life, Jerome notes a series of events which she committed, which cannot be explained except by admitting her insanity. Among these were: 1) Those most shameful songs which Catherine sang impudently, when in the autumn of the year 1885, in the company of her father, she visited Matthias Scheuven, with whom she had already entered into a betrothal. Indeed, I know that this does not clearly demonstrate madness, as the Defender of the Sacred Bonds initially observed, "the world is full of madmen and madwomen." Again, with the second Defender, I do not consider it impossible (although the witnesses are silent on this point, indeed they declare that Catherine was not addicted to drunkenness,...)

[*Latin ed. p. 293*]

It is uncertain whether the desire to please her fiancé, or more abundant refreshments, or even the very festivities that were being held at that time, stirred the spirit of Catherine more than was fitting, and thus induced her to act in that manner. Furthermore, even granting this, it is always surprising and unusual that a young woman, residing in another's home, should sing so obscenely before her father, her fiancé, and others. As everyone can see, this does not merely betray youthful levity and license, but also reveals a mind that has lost both moral sense and the serenity of judgment. Four witnesses, in every way worthy of belief, relate that, although Catherine was in perfect health in the year 1885, she nevertheless urgently requested to receive the sacraments of the dying. Moreover, anyone who considers this fact in light of all the circumstances related by the parish priest, Lambert Hack, who visited her in order to administer the sacraments so earnestly requested by her (which I shall pass over for the sake of brevity), will immediately realize that this concerns a true madness, by which Catherine was agitated for several hours. However, the witnesses that this learned Defender presents, who are from the place of Catherine's birth, state that they did not hear, nor did they observe, that she was insane. It is clear that this argument, being entirely negative, cannot in any way invalidate the facts cited above, nor the other events mentioned below, and which were entirely unknown to these very witnesses. Therefore, the testimony of the people from the place of Catherine's birth is not properly presented to undermine the soundness of her mind at that time, when Catherine was absent from her homeland, and was behaving in a loving manner. Immediately before her marriage, Catherine initiated a legal proceeding against Joseph Wilhelmi, because, as she claimed, he had intended dishonorable acts against her. Now, however, the accused was acquitted, because the judges considered Catherine to be unreliable due to her mental condition. Several witnesses testify that Catherine, before being joined in

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marriage to Peter, resided in his house and lived with him for almost three weeks in a private manner.

[*Latin ed. p. 294*]

294 Having examined all these testimonies, and considering both the veracity of the witnesses and the truth of the recounted events, it is not reasonably possible to doubt the insanity of Catherine. Therefore, the entire question is reduced to this: whether we can trust the aforementioned witnesses, and whether they have striven solely for truth in their testimonies. Once this is demonstrated, it is no longer permissible to doubt the objective truth of the events narrated, and once admitted, it is justly and safely concluded: that Catherine, on those days immediately preceding the celebration of the marriage, was seized by a derangement of the mind. The Consultant demonstrated, through careful examination, that the aforementioned witnesses have spoken the truth and are worthy of belief. From what has been discussed so far, it is inferred that the witnesses Charles Diederich, Margaret Diederich, Mary Knauff, Catherine Volten, Anne Bohl, and Eli sabeht Knauff, fully deserve to be believed, as they unanimously testify, under the sanctity of oath, that Catherine, within those three weeks immediately preceding the marriage, frequently suffered from a derangement of the mind. This itself is admitted by experts in the art of Psychiatry by the secular tribunal, and finally (which is the strongest argument) by the very ecclesiastical judges of first instance, who, in the very decree in which they decide that there is no basis for declaring the marriage null, preface it with this statement. Furthermore, it is evident that Catherine, Jerome, even before the marriage with Peter, frequently exhibited signs of being mentally disturbed. This was what was to be proven. The judges of first instance, as we have seen above, testify to this. "Although it is evident that Catherine, Jerome, even before the marriage with Peter Stein, had exhibited signs of a hereditary disposition to insanity, and frequently showed signs of being mentally disturbed, nevertheless, it has not been conclusively proven that there was a continuous state of insanity before the marriage, nor that there was insanity at the time of the celebration of the marriage, to the exclusion of all reasonable doubt. Therefore, with the unanimous consent of the judges, it is decided: that there is no basis for declaring the marriage null." Regarding this judgment, with all due respect to the Most Reverend and Most Reverend...

[*Latin ed. p. 295*]

TREVIREN. 295 To the judges, with this one observation, that it appears illogical to the undersigned, to the Reverend Parish Priest, to the Doctors, defenders of Peter, and also to the reporter of this case in the second instance, namely, Doctor Stiefelfegen, Vicarious of the Cathedral Chapter of Coloniensis, who vigorously defend "Catherine, who was in love during

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the celebration of the marriage." To avoid being too lengthy, I will omit the wise observations of these men, and I will address the very heart and core of the matter; namely, to demonstrate that Catherine was in love at the time of entering into the marriage, and I am confident that I will prove this, to the exclusion of any reasonable doubt. Firstly, I do not deny that, before the marriage, Catherine's madness was not continuous, as correctly believed by the judges of the first instance. But even granting this, does it follow that Catherine was not in love at the time that preceded the marriage? By no means. For it is well known that in the asylums for the insane, there are often found those who are not continuously insane, but rather, at times, they reason correctly and are more astute than perfectly sane individuals; and yet, by the common opinion of men and the judgment of experts, these are considered to be of unsound mind. This very thing, as we have seen in the preliminary remarks, is admitted by the Glossa, whose words it is fitting to repeat here: "The insane," it says, "are sometimes found in a state of apparent tranquility, and yet they are not of sound mind, although they may appear to be so." Therefore, from the fact that Catherine, as the judges say, did not have a continuous madness before the marriage, it does not necessarily follow that she was of sound mind at the time that she entered into the marriage before the Church. However, it remains to examine more directly and closely whether Catherine was mad at the time of contracting the marriage. Therefore, I firmly maintain that she was then in a state of madness, based on the following testimonies of witnesses. And first, Catherine's madness is suggested by the delirious actions that she performed in placing her own wedding ring on her head on the solemn day of the marriage celebration.

[*Latin ed. p. 296*]

296 FROM THE HOLY GENERAL COUNCIL: We have five witnesses, among whom is the Reverend Mr. Michael Dunkel, the parish priest, who blessed the marriage of Jerome and Catherine, and who is rightfully deserving to be considered as a witness of the highest order. And these, not relying on the accounts of others, but supported by personal experience, unanimously testify that they saw Catherine, during the very act of the marriage celebration, to be suffering from a mental disorder. Three further arguments remain, which most certainly establish Catherine's insanity at the time of the marriage. 1. There is the sworn testimony of two experts in the field of Psychiatry, who, after a diligent examination of the testimonies of the witnesses, and after carefully considering the nature of the illness with which Catherine was afflicted, conclude that she was insane at the time of the civil marriage; and this judgment extends to the time when the religious marriage was performed, as is evident from the context. These opinions of the Doctors are diminished by the esteemed defenders of the validity of the marriage, who consider them to be to be rejected for three

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reasons, which I will briefly present here: 1. because the Doctors' judgment is based on the testimonies of witnesses who testify to Catherine's insanity, but whose testimony the defenders themselves do not consider to be sufficiently reliable; 2. because the Doctors assume that whoever once shows certain signs of insanity, is never of sound mind; 3. because they fail to prove that Catherine was insane concerning the marriage. I readily concede that the foundation upon which the Doctors' opinions are based is the testimony of the witnesses; but since the veracity of these witnesses is already safely established, it follows that the Doctors' opinion remains based on a solid foundation. As for the second reason, I observe that the deductions of the experts are based not on imaginary assumptions, but on scrupulous and careful observation. For, considering the nature and character of the chronic and incurable illness, they rightly conclude that Catherine's insanity was constant, and that she was not of sound mind during the act of the marriage celebration. As for the third reason, it is certainly conceded that the Doctors do not directly prove...

[*Latin ed. p. 297*]

TREVES. 297 Catherine was declared insane concerning the marriage. However, considering the nature and severity of the illness, this was entirely superfluous. Therefore, the vows sworn by experts in the art of psychiatry stand in their full force, providing an authentic and certain argument for Catherine's insanity at the time of the marriage.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE BY OFFICE. Peter began to fight against the marriage, arguing that Catherine was reduced to insanity before the marriage took place. And after obtaining a sentence from a secular court on July 14, 1896, which annulled the civil bond, he later appealed to the ecclesiastical tribunal in Augsburg, Treves; but with entirely unfavorable results. Indeed, the most reverend Treves court, after thoroughly examining the matter, delivered its judgment: "There is no proof of the nullity of the marriage." It is not unknown to me that the metropolitan court of Cologne, to which Peter's advocate appealed, decided: 1. That the sentence of the first instance should not be upheld. 2. That, considering chapter 24, X, 4, 1, the marriage between Peter Stein and Catherine Jerome is null. The Cologne judge's sentence pleases the most learned consultants, theologians, and canonists; but there are not light arguments to the contrary. And since the Cologne judge appeals to chapter 24, concerning betrothals and marriages, let the Most Reverend Fathers, for the benefit of the faithful, present a few points relevant to the matter in law. Indeed, in cause 32, question 7, canon 25, it is stated: "Those who have contracted marriage in a state of sanity; and if either of the two suffers from insanity or madness, or any infirmity, the marriage of such persons cannot be dissolved on account of the infirmity." Similarly, it should be understood concerning those who are blinded by their enemies,

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or have their limbs amputated, or have been mutilated by barbarians." This doctrine is contradicted by Pope Fabian in the cited cause 32, question 7, canon 26; (there) "Neither a madman nor a madwoman can contract marriage; but if a contract has been made, they are not to be separated."

[*Latin ed. p. 298*]

298 From the Most Holy Council, follows chapter 24, book 3, concerning betrothals and marriages (there): "A certain R. proposed that he had betrothed his daughter to a certain man; and below. But if the same woman, with the aforementioned man, who is afflicted with a continuous frenzy and, because of this frenzy, cannot legally obtain his consent; we command that, if you know that this is the case, you separate these individuals from each other." Therefore, with the best of reason, Barbos, collected by a doctor, in the aforementioned chapter 24, concerning betrothals and marriages, number 1, teaches: "If someone is perpetually furious, he cannot enter into marriage, because he cannot give consent. The Doctors conclude that this is understood when someone, through perpetual frenzy, is either furious or completely deprived of the use of reason." But that conclusion, "once furious, always furious," which so greatly displeases the esteemed opponents, applies only to those who are in a continuous and sufficiently prolonged state of dementia; as taught by Mascard, in "De probatio," conclusion 825, where he explains the opinions of various doctors and then reconciles them: (there) "However, several have differed from this opinion, whom we have said favor the aforementioned opinion (that once furious, one is always furious); among these, Alex holds the first place, saying that if it is proven that someone was furious on a certain day, it does not follow that he was furious at the time in question. This is supported by reason, namely because the presumption of frenzy contradicts the original state. However, Alex, and those who adhere to his opinion, will remain in the aforementioned opinion (that once furious, one is always furious), if we say that their subsequent statement (that if it is proven that someone was furious on a certain day, it does not follow that he was furious at the time in question) applies only if the furious person did not remain in a state of frenzy for very long; for in some cases, it may happen that someone is not presumed to be furious afterward; indeed, according to Bart Altera, someone who was furious for a moment, or for a few days, is not therefore presumed to have been furious in the following time."

[*Latin ed. p. 299*]

TREVIREN. 299. The opinion (that once someone has been deemed insane, they are always to be presumed insane) will find its place when it has been proven that someone has been insane for a continuous period, such as a month or a year, and that the insanity has subsequently been confirmed; for in this case, they are always presumed to be insane. Zacchias,

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Quaestiones Medico-Legales, Book 2, Title 1, Question 23, paragraph 6, states: "(There) the conclusion (that once someone has been deemed insane, they are always to be presumed insane) cannot hold in cases of momentary insanities, or those that do not last for a long time, and see regarding this rule what Mascard has stated (in that place), for in order for that conclusion to be verified, it is necessary to prove that someone has been insane for a continuous period, and for a month or a year." Furthermore: the parish priest Lambert Hancht and several other witnesses called to court testify that they have never seen Catherine exhibit signs of insanity. Therefore, unless I am mistaken, the marriage in question falls under canon 25, chapter 32, question 7 (in that place): "Those who have entered into marriage in a state of sanity, and to whom either insanity or madness, or some other infirmity, has subsequently arisen; because of this infirmity, the marriage of such persons cannot be dissolved," as well as canon 26 in the same place (in that place): "Neither an insane person nor an insane woman can enter into marriage; but if a marriage has been contracted, they are not to be separated." The esteemed consultants, through certain absurdities attributed to Catherine by some witnesses, argue that she fell into insanity before the celebration of the marriage; but, in the first place, not all who act foolishly are of unsound mind, and if a single or even both instances of absurdity are sufficient (Zacchias, *Quaestiones Medico-Legales*, Book 2, Title 1, Question 4, paragraph 12) to depict insane persons, then our case is settled. The words "I see what is right, and I approve it, but I follow what is worse" are uttered by men. The aforementioned Zacchias, in this matter, easily demonstrates that in any instance of insanity, reason is either damaged in itself, or simultaneously with other faculties that serve reason.

[*Latin ed. p. 300*]

300. From the Council of Trent, without harming its integrity, it is possible for a man to become insane, and this is what it states (loc. cit. n. 5 and following). "If someone is in whom, with a preserved reason and memory, or with reason alone, the imagination appears to be impaired, this person should not be considered among the insane, and should not be unjustly prevented from performing civil acts for that reason, such as administering their property, giving testimony, entering into marriage, indeed, even from acting as guardians, and even from being admitted to the sacraments, and from other things; and let no one think that these things are rashly and presumptuously stated, but I am prepared to demonstrate that they are so, with arguments that are already evident and have the force of demonstration." "And first, since, according to the consensus of all physicians, the imagination is not only impaired in certain forms of dementia, but also in other diseases that are neither to be considered among the dementias, nor are they to be considered as such, it is clear that no other reason can be given for why two patients, both with impaired imaginations,

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are not both considered insane; but one is considered insane, while the other is simply considered to have a poor imagination: for those with vertigo see everything turning in a circle, while remaining motionless; those with suffusion see many things moving before their eyes, while nothing is actually placed before them; those with jaundice see everything tinged with yellow, while everything is actually endowed with its natural color. Therefore, it is clear that the imagination is impaired in these cases, and all acknowledge it, yet neither those with vertigo, nor those with suffusion, nor those with jaundice are considered insane by anyone, nor have they ever been considered insane, which would be the case if a person became sane simply with an impaired imagination..." Furthermore, not everything that the witnesses produced by Peter, affirmed under oath, is in accordance with the truth. Moreover, the torments with which the man tormented his wife were proven by the testimony of many witnesses. This fact of discord and torment, which led Catherine to madness, is to be highly valued, because if the celebration of marriage is hindered by discord and torments...

[*Latin ed. p. 301*]

THREE MEN. Thirty-one individuals followed, and neither did madness precede the celebration of the marriage. I pass over in silence those who, as witnesses, attempt to suggest that Catherine was mad at the very moment of the marriage celebration, because other witnesses assert the contrary, and claim to have seen nothing of the sort. Moreover, the esteemed counselor unjustly objects that, in the conflict of witnesses, greater credence should be given to those who testify concerning madness than to those who testify concerning sanity. The contrary is the case. Mascard, *De probatione*, cap. 827, n. 11 and following (there): "If, indeed, some witnesses should testify that a person was mad, while others testify that he was of sound mind, then greater faith must be given to those who testify concerning sanity, as the author Jar. states. And this is not without reason, for those who testify concerning sanity testify concerning a quality that naturally belongs to everyone and with which a person is born: for, for the most part, everyone appears in public with a sound mind. This presumption is confirmed by both canon and civil law, as is shown in the chapter concerning the elected successor from the inheritance. Furthermore, I wish to add that this principle applies even if the witnesses who testify concerning sanity are few, for example, two, while those who assert madness are many, for example, a thousand: for even then, greater faith must be given to the two who testify concerning sanity than to the thousand who deny it." Someone might ask: Is it not beyond dispute that Catherine, before the celebration of the marriage, visited the parish priest one day as if she were dying, while she was in good health? Indeed: and for this reason, the witnesses brought by Peter describe Catherine as being mentally disturbed from that time onward. But, I beg you, how can we justly say that Catherine acted in this

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way because of madness, when the witnesses, and especially those who were present at the event, attribute that action not to madness, but to a trick of the imagination? Nor am I moved by the opposing doctors, Roller and Nobel: for they are manifestly mistaken, not only in law, but also in fact.

[*Latin ed. p. 302*]

O02 FROM THE HOLY GENERAL COUNCIL: Having noted the aforementioned matters, it was deemed necessary to resolve the doubt concerning whether the judgment of the tribunal of Cologne should be confirmed or rejected in the case at hand.

RESOLUTION: The Holy Office, after deliberation on July 22, 1899, decided to respond: "The judgment is to be confirmed."

SUMMARY OF RIGHTS: On August 19, 1899, Session 22, Chapter 8, Regarding Appeals. This controversy was presented to the Most Eminent and Reverend Fathers in plenary assembly on April 29, 1899, and the following formula for inquiry was proposed: "Whether the Episcopal decree is to be upheld concerning the second and third points in the case." The response that emerged was: "Concerning the second point, affirmative; concerning the third point, deferred and to be considered." (1)

The Most Eminent and Reverend Fathers' intention was that the Bishop should state whether the decree of Bishop Giovannelli had always been observed, and if affirmative, that the relevant documents be submitted. However, since there was no legal certainty regarding such observance, it was requested of the Bishop that he indicate who had administered the Sanctuary of Saint Gerard during this period, namely, whether it was the parish priest of Saint Leonard or the Archpriest of Saint Nicholas, and whether this had been done without contradiction. The parish priest of Saint Leonard, feeling burdened by the affirmative response concerning the second point, lodged an appeal. The Bishop stated that the decree of Bishop Giovannelli had always been observed, although he could not prove this by presenting documents, because the archives of the episcopal curia had been subject to destruction in the years 1860-61. However, he considered it...

COMPENDIUM OF THE FACTS: (i) Reported in Volume XXXII, page 154.

[*Latin ed. p. 303*]

SORANA 303: To refute the truth through equivalent arguments, and through the testimonies of individuals who deserve complete trust. A Synopsis of the Argument. DEFENSE OF THE ABBOT. The Advocate for the Abbot of Saint Leonard notes, first of all, that the Bishop had not been able to prove anything regarding the observance of the Bishop Giovannelli's decree, but had stated that the documents proving it had been consumed

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by fire. However, the procurator, on the contrary, stated that the Abbot had already presented arguments, drawn especially from the testimonies of the townspeople (commonly known as "official acts"), which demonstrate that he and his predecessors had consistently managed the offerings. Nevertheless, the advocate insists, the Abbot has new documents at hand, which he now presents. First, he presents manuscript codices, in which the Masses celebrated each year are recorded. These codices begin from the year 1852 and extend to our time. From these, it is evident that, on the occasion of the feast, the Abbot, by his own authority, collected the Masses and distributed them frequently to priests and monks of religious communities who were pleasing to him, without any dependence whatsoever on the Episcopal Curia. "Masses collected in the church of Saint Gerard by the Abbot, Father Giacomo Orlando, and distributed by him to the priests and monks of the religious communities listed below." Furthermore, even if the Archpriest of Saint Nicholas, and he himself, the Vicar General of the Sorana diocese, were admitted to celebrate these Masses, they did not, of course, celebrate them by their own right, but because the Abbot of Saint Leonard had granted them the celebration. This, indeed, wonderfully demonstrates a custom favorable to the Abbot, and shows that there is no trace whatsoever of Bishop Giovannelli's decree. For, according to this decree, the collection of Masses and their distribution would have belonged to the Curia, which would now have had to delegate this task to either the Abbot or the Archpriest. Moreover, the advocate argues, it cannot be objected that the Abbot collected and distributed the Masses by delegation from the Curia, because the codices are written in such a way that no mention of any delegation is made.

[*Latin ed. p. 304*]

304 FROM THE DECREE OF THE HOLY GENERAL COUNCIL, but it should be clearly understood that the Abbot acted freely, without anyone delegating authority to him, but by his own exclusive right. In the codes, there is a signature of the Abbot: one seal, namely, the seal of the Abbey. Furthermore, the advocate concludes, it is proven that the Abbot administered the offerings. He who says that he did so by delegation must prove it. The advocate, presenting documents that demonstrate the custom, mentions letters in which priests, chosen by the Abbot to celebrate Mass, received compensation. These letters are written in such a way that it is clear that the Abbot had the authority to distribute. "I beg you to remember me at the upcoming feast of Saint Gerard, as you kindly did last year." He recalls inventories of donations, which, just like the Mass books, are distinguished by the Abbot's signature alone. Finally, he recalls a long series of receipts from which it appears that the Abbot spent large sums, first to repair and decorate the chapel; then to enrich it with sacred furnishings. No one, the advocate says, will believe that the Abbot sustained so many

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expenses, largely of a luxurious nature, unless he had administered and received the offerings, unless he had been able to add to his own income the substantial sums allocated for the Masses. Moreover, according to the advocate, this generosity of the Abbot not only proves that he administered the offerings by custom, but that he was aware of his own rights. And he further argues that the same documents demonstrate that this belief in the Abbot's rightful authority was common in those parts. For the faithful, if they wished to contribute something for the decoration of the chapel, sent it to the Abbot, so that he might carry out their wishes. If it is objected that these documents do not go beyond the year 1852, the advocate replies that this custom, spanning forty years, is sufficient in itself. For, even against the law, writers, even the most rigid, admit that a custom can be established in forty years. Nor do they deny that any right can be prescribed by him who has possessed it for forty years. "Whether a decade is sufficient to establish a custom against the law, I cannot say."

[*Latin ed. p. 305*]

SORANA 305, concerning ecclesiastical laws and constitutions: In resolving this question, the Doctors hold diverse opinions. Many believe that a distinction should be made between ecclesiastical laws or constitutions once received, and those never received; and that the former can be abolished by contrary custom after a period of ten years, while the latter require a period of forty years for their abrogation. A second opinion teaches that canonical law, whether received by usage or not, cannot be abolished except after a period of forty years. A third opinion asserts that to abolish any ecclesiastical constitution, the force of a reasonable contrary custom is sufficient for a period of ten years... The third opinion, with the aforementioned declaration, appears more probable. (Reinffenstuel, *Ius can. univ.*, book 1, title 4, § 106). Contrary to this, ecclesiastical rights, episcopal rights, tithes, and the like, are prescribed after a period of forty years (ibid., ad tit. 26, book 2, § 164), chapters 6, 8, and 9, of the same work. But, the advocate argues, even if a longer period of possession were required, this does not apply to the Abbots, who, as they say, have administered [oblations] since a time, namely, whose beginning is not remembered. To prove this, the advocate first presents an inventory of donations, which was compiled by Abbot Mazzenga at the beginning of this century. He then cites a report to the Holy See, sent by Bishop Anthony in the year 1751 to the Pope. In this report, the Bishop clearly states that "the Church has revenues which are administered by the Abbot of St. Leonard." Indeed, the Bishop would not have said this if the oblations were administered by the curia itself, or according to the decree of Pope Giovannelli, or by the Archpriest, or by the Abbot by delegation from the Curia. For, according to the advocate, among the revenues are those derived from the chapel of St. Gerard. Furthermore, the advocate recalls that, at the beginning of the eighteenth century, the

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Abbots restored the chapel of St. Gerard, "adorned it with sacred cells, arches, and decorations." This is evidenced by a marble inscription affixed to the church wall. Because the Bishop, in his letters, relies on proof by equivalence, the advocate argues that certain acts demonstrate this equivalence.

[*Latin ed. p. 306*]

306 It is not possible for the mind of the Holy Council to prevail. The Bishop in the town of novae states that the offerings, which the faithful bring to the chapel commonly called Canneto, are administered by a delegation of the curia. However, the advocate first states that what the Bishop of the diocese affirms, the local pastors deny, who testify that they have, from ancient times, administered these offerings by their own authority. But, this custom, it is said, cannot be transferred from one place to another; and even more so, because the same circumstances do not exist in the chapel commonly called Canneto and in the chapel of St. Gerard. For the former is not attached to any parish, nor is any pastor designated as its rector; on the contrary, the advocate insists, the patron is present. Furthermore, he notes that the Abbots have administered the offerings indiscriminately, whether the Archpresbyterate was vacant or not; and sometimes, as happened with Erasmo Zeppa, after the Abbey was dissolved, they obtained the Archpresbyterate because this is a more lucrative and prestigious benefice. Finally, he observes that the custom of administering the offerings is firm and constant, since, as has been demonstrated in another proposition of the case, the common law grants to the pastor the administration of the offerings made in chapels located within the parish boundaries. The advocate then proceeds to a question pertaining to precedence in sacred functions; which is raised on the basis of a new hearing. The advocate notes that the reports of the Sacred Visitation recently presented do not seem to grant any shadow of precedence to the Archpriest. But the Archpriest and the Abbots, along with two pastors, are said to be equal in rights: who "independently and freely preside over the town and perform the functions common in the Church." Moreover, the advocate points out that these significant prerogatives, which formerly belonged to the Archpresbyterate, are testified by Gentilucci; that they were unjust usurpations, which the Archpriest Baldassari perpetrated: "When Archpriest Baldassari, my predecessor, found a favorable circumstance of time, he dared to exercise in his Church, without any grant from the Apostolic See, the mitre, the pastoral staff, and the Pontificalia."

[*Latin ed. p. 307*]

SORANA 1 307. If we are to believe the testimony, after enduring harsh times, he met his end, most wretchedly slain. It could be added, the advocate urges, that the decrees of the Sacred Visitation of that Bishop, Sisto y

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Britto, are brought forth, to whose testimony the Archpriest has appealed to demonstrate his authority. These decrees, according to the advocate, establish a remarkable equality among the Parishes, in which both parochial and non-parochial functions, as well as burdens, are distributed alternately. However, the advocate notes, the Abbot of S. O. C., most obedient to the Archpriest, grants him some degree of precedence willingly: he allows that on certain solemn days, the sacred office be celebrated by him with chanting. But it is observed that in the Bishop's decree, no specific number of such solemn days is defined, on which the Archpriest is to chant. However, this decree grants to the Archpriest the authority to order all functions that are performed in the Church in common; and this, the advocate considers, is a very grave matter, and carries with it a double inconvenience. Firstly, because if the solemn days are not precisely defined, the Archpriest can extend this privilege beyond what is due. Secondly, because if all functions, not strictly parochial, are ordered by the Archpriest, the Abbot would have all authority concerning these functions taken away from him. And yet, since he is the Parish Priest, he still has the right to foster the piety of the parishioners through public prayers. Moreover, since many external functions occur for which payment is usually collected from the faithful, it must be ensured that the Archpriest, who orders these functions, does not add the payment entirely to himself, excluding the Abbot. Therefore, the advocate, in the name of the Abbot, requests that the solemn days be defined, on which the sacred office is to be solemnly celebrated by the Archpriest. Regarding the remaining functions, he implores that it be decreed that they be ordered and celebrated alternately, either weekly or monthly, sometimes by the Abbot, and sometimes by the Archpriest.

DEFENSE OF THE BISHOP. From the opposite side, or in favor of the Episcopal decree, are presented the following arguments, beyond those already mentioned by the same Bishop today, and which were cited in the previous proceedings.

[*Latin ed. p. 308*]

308 From the documents of the Sacred Council, I can draw no other conclusion. It is, however, fitting to observe, from the arguments presented by the Bishop in his letters, that this one thing appears to be established. Namely, the decree of Bishop Giovannelli, concerning the enjoyment or observance of the property, or the rights, of the Church of Saint Gerard, which was united fifty years prior to the decree with the parochial benefice of Saint Leonard, has never been abolished by any contrary edict. Furthermore, the administration of the offerings, which is ordinarily carried out by the Abbot, and which, when the Abbey is vacant, is also carried out by the Archpriest, appears not to pertain by its own right or by the right of the benefice to the Abbey itself, but rather by some extrinsic title, such as a mandate or delegation. With these premises established, the following

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questions were proposed for consideration: I. Whether one should adhere to or depart from the decisions concerning the second point of the Bishop's decree in this case. II. Whether the Bishop's decree is valid concerning the third point in this case. RESOLUTION. After deliberation, the Sacred Congregation decided on August 19, 1899, to respond as follows: To I. In the decisions, and in accordance with the intention. To II. The administration of the offerings pertains to the Parish Priest, under the supervision of the Ordinary.

REGARDING THE QUESTION OF INTERDICTION FROM PROCESSIONAL CEREMONIES AND PRECEDENCE. August 19, 1899. Through summary petitions. In the Church, which bears the title of Stella Maris, in the town of Sliema, in the diocese of Malta, there began in the year 1872 a certain pious association called - the "Pia unione di Maria Vergine Desolata" (Pious Union of the Sorrowful Virgin Mary). In the month of July of the year 1875, this Pious Union was established as a Society of the Holy Scapular of the Blessed Virgin Mary, to which were granted all rights and privileges.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 309*]

In MELITENSIS, certain privileges were granted, which had been bestowed upon such Societies by the Holy Pontiffs. We read that the act of its establishment, announced by a Pontifical Brief, was addressed to the Reverend Camillo Scicluna, at that time Bishop of Melitensis, who, by decree of December 12, 1878, expressly approved its statutes. However, since the members at that time did not wear a distinctive habit or insignia, it was deemed that this association did not merit the name of a proper confraternity, but rather had been established solely for a spiritual purpose, namely, for the sanctification of its individual members, as is characteristic of Pious Unions, which are distinguished from confraternities, concerning which canon law provides instructions even regarding the performance of public functions of external worship. Meanwhile, in the year 1878, a church dedicated to *Stella Maris* was established as a parish church; from this arose the intention of several parishioners to found a Society of the Most Holy Sacrament, which is to be established in each parish for the purpose of worship of the Divine Sacrament.

This undertaking, while awaiting execution, encountered certain difficulties, because the parish priest, who was also the president of the Pious Association of the Holy Scapular, desired and endeavored to have the duties of the Society of the Most Holy Sacrament assigned to that Pious Association, since it was most eager to fulfill such duties.

Indeed, several decrees of the Melitensis Ordinaries also stipulated that

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the various duties of external worship should rather be entrusted to a single society, rather than having distinct societies established for different duties, which, when erected in the same church, cause confusion and are a constant source of rivalry. Nevertheless, with the passage of time, the Confraternity of the Most Holy Sacrament was duly established, and the Pious Association was erected into the Third Order.

However, unfortunately, the disagreements that had accompanied its beginnings grew more serious with each day, especially due to the prior rights that the two societies claimed for themselves; until these rivalries were brought to light and public view, causing great scandal among the faithful.

[*Latin ed. p. 310*]

310 FROM the acts of the Diocesan Council, on the feast of the Body of Our Lord Jesus Christ, in the year 1897, when, during the organization of the public procession, a clear dispute arose between the sodalities regarding the right of precedence. Indeed, it appears that, in order to eliminate the root of these disputes, the Moderator of the Pious Association of the Most Blessed Virgin Dolorous, Father A. Scapulari, obtained from the General Superior of the Order of the Servants of Mary, permission to establish said Pious Association as a Third Order; a privilege which he easily obtained; but the same Moderator found it not so easy to obtain the consent of the Bishop of Malta, who long hesitated, believing that things would go from bad to worse if he approved the establishment of the Third Order. - But finally, he consented and, on October 27, 1896, granted permission, but with the proviso "reserving the rights of the parishes and other sodalities." When the Pious Association was elevated to the dignity of a Third Order, it vigorously began to claim precedence, even in the procession to be held on the feast of the Body of Our Lord Jesus Christ; but another sodality, called "of the Most Holy Sacrament," opposed this intention with no less force; so that, at its request, the Bishop, by decree of May 7, 1898, provisionally, or until the matter was settled, forbade the members of the Third Order from participating in the public procession on the feast of the Body of the Lord. The Moderator of the Third Order appealed against this decree. In a synoptic discussion, the Brothers of the Most Holy Sacrament, through their representative, offered several observations, which perfectly align with the Bishop's intention and complaint. For the force and power of the protests presented by one and the other lie in this: either the members of the Third Order are prohibited from the right of precedence, since they have renounced this right; or, if this is not granted, they are deprived of the rights and constitution of the Third Order, with the revocation of the Episcopal decree. For the deceitful petitioner lacks what he requests, as

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Canon Law and even natural reason proclaim.

[*Latin ed. p. 311*]

MELEVITANA 311: Justice; the Bishop himself, having protested, stated that he had granted the requested permission for the establishment [of the sodality] under the express condition that the rights of the Sodalitas would not be diminished; and, above all, that the precedence of Tocco would be maintained, since this was the principal matter and the root of the rivalries. Therefore, the decree of establishment was granted under this condition; and if this condition is lacking, the aforementioned decree necessarily falls. The members of the Sodalitas, in order to signify their intention to be in harmony and peace with all, propose the following conditions for a settlement: 1. That on feast days, on which the Most Holy Sacrament is exposed, the Sodalitas be given precedence, with the option for the other sodality of servants to abstain. 2. That in all other feasts of the Servants, the Sodalitas be given precedence, with the option for the other sodality not to participate. On the other hand, the members of the Third Order of Servants of the Most Blessed Virgin, through their procurator, state that the blame for the rivalries arising from the aforementioned Third Order should not be attributed to them, because they had already foreseen this and had endeavored to avoid it; and in the petition presented to the Curia in the year 1878, requesting that the aforementioned Pious Union be entrusted with certain duties pertaining to the Confraternity of the Most Holy Sacrament, the following decree, issued by the Most Reverend Carpegna, General Vicar of the Roman Curia, on February 2, 1685, was mentioned: "§ II. What must be done in those parishes in which there is not a Confraternity of the Most Holy Sacrament, but rather of another title: Under this heading, the following should be noted: In many parishes of this esteemed city, Confraternities of lay people are established, but not under the title and institution of the Most Holy Sacrament, and therefore the members of these confraternities never accompany the Holy Communions to the sick, nor do they have any influence regarding the veneration of the Most Holy Sacrament, which is a very serious detriment to the Eucharistic cult. And because in these parishes there is no other Confraternity to provide for this, it is not easily remedied by the establishment of a new Confraternity of the Most Holy Sacrament, because some parishes do not have sufficient space for multiple oratories, and moreover, it is difficult to maintain themselves among different..."

[*Latin ed. p. 312*]

512 From the decree of the Most Holy Council concerning the unity of the Church and the Holy Peace: Our Lord has foreseen the opportune remedy so that the Most Holy [Sacrament] may be served. It is that Companies of another title, established in Parishes where there is no Company

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of the Most Holy [Sacrament], or in Oratories near to these, from now on, must undertake this duty of accompanying the Most Holy Viaticum in the manner used by all Companies that are founded under the institution of the Most Holy Sacrament – and to this, He also grants and guarantees to such Companies of another name, the faculty of joining with their own title also that of the Most Holy Body of Christ: and to be called in the future, for example, the Company of Saint Mary of Grace, under the title of the Most Holy Sacrament. But this, however, without any prejudice to the observance of their original institution, also with express faculty to enjoy all the graces, privileges, favors, and indulgences that they have enjoyed and enjoy at present – as well as with the sacred benefit of the new indulgences that Our Lord has granted to those who accompany the Most Holy Sacrament in the aforementioned processions.

But a Fraternity established for the Most Holy Sacrament, due to perpetual quarrels and rivalries. In order to curtail these, a Pious Association was established in the Third Order on November 10, 1895, for the faculty that Father Vincent La Rosa had already obtained since 1892. The procurator reports that the petition presented to the Curia on November 10, 1895, had no effect until October 20, 1896, on which day a Rescript from the General of the Order of the Servants of the B.V.M. was presented to the Bishop. In the Rescript, the faculty was granted to Father La Rosa to erect a Pious Association in the Third Order; and on this, the Bishop issued a decree on October 20, 1896, "Let it be recorded and published." However, after a few days, namely on October 27, 1896, the known and controversial Rescript was added to the petition of November 10, 1895. Having obtained the constitution in the Third Order, the procurator notes, the members rightfully claimed precedence for themselves.

[*Latin ed. p. 313*]

Regarding the matter of the Sodality of the Most Holy Sacrament, and also concerning the procession to be held publicly on the feast of the Body of Our Lord Jesus Christ. In truth, the Holy Congregation of Rites, on March 27, 1893, in response to the question: "Does the Sodality of the Third Order of Saint Dominic have the right of precedence in processions, even on the feast of the Body of Christ, over any secular Confraternities, even those dedicated to the Most Holy Sacrament?" answered: "Affirmatively, provided that the Sodality enjoys the privileges of the Third Order and proceeds in a collegiate manner." However, the members of the Sodality of the Most Holy Sacrament, and even the Bishop himself, intended to resist this certain right. The Bishop issued a decree on May 17, 1898, which ordered the Parish Priest "provisionally not to allow their simultaneous participation in the aforementioned processions." Therefore, the members of the Sodality of Servants [of the Most Holy Sacrament] state that such a decree cannot be maintained, neither as provisional, since it openly

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contains a violation of the law; nor can blame be attributed to the members of the Sodality of Servants, who, exercising their right, do no harm to anyone. However, it is evident, from the intention of the Bishop, that the decree was not provisional, since, once and again, the Holy Congregation was urged to revoke the decree or to arrange matters differently, but the Bishop did not wish to withdraw in any way from the decree. The members insist that the Bishop's complaint should be dismissed, who accuses them of bad faith, alleging that they were dishonest and deceitful in their prayers; for they state that there was no falsehood in their prayers concerning the facts; but regarding the law, deception or fraud cannot be admitted, because no one is allowed to ignore the law, and the Bishop, above all others, should have known that the members of the Third Order could not renounce the right of precedence that belonged to them; and that this right belonged not to individuals, but to the group or Order itself, by the will of common law. Truly, Pope Gregory XIII, in Constitution 10, § 2, commands: "To all and each, to the clergy and clerics, and to all persons, whether ecclesiastical or secular, and to all Orders, Religious, and military Regular bodies... it is permitted to them, on that very Sunday, within..."

[*Latin ed. p. 314*]

314 From the Acts of the Holy General Council concerning the Octave of Corpus Christi, regarding the celebration of processions on that day, as on all other days of the Octave: "And furthermore, we grant and permit, without any disturbance, annoyance, or impediment, that the aforementioned [permission] be observed." Ferraris, Volume V, comments on this, number 27: "However, bishops and pastors ought not to deny such a permission [to intervene] to the Regulars; otherwise, if it is denied, recourse may be made to the Apostolic See, from which a letter will be sent to the bishop, ordering him to grant the permission; as was written by the Sacred Congregation in the decree concerning Papia, on May 11, 1696." And the Sacred Congregation of the Holy Office, in a decree issued in Monopoli on February 23, 1895 (1), in response to the question: "Whether the decree issued by the Most Reverend Bishop of Monopoli on November 28, 1893, concerning the prohibition of the brethren of the Third Order of St. Dominic from participating in processions, is to be upheld," responded: "The decree of the Bishop is not to be upheld; and it is the right of the Third Order of St. Dominic to participate and lead in processions, whenever they participate with their proper habit and collegially; excluding entirely those who are not regularly enrolled in the same Third Order." And, for the same reason, the matter was again presented in the following month, and the Most Eminent and Reverend Fathers gave their response: In the aforementioned decisions and further. Considering these matters, the question was posed: What response should be given to the present matter? RESOLUTION. After deliberation by the Sacred Congregation on August 19, 1899, it was decided to respond:

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"Having considered all things, the Sacred Congregation decrees that the Third Order of the Servants of Mary, Dolors, abstain from participating in the procession on the feast of Corpus Christi." (1) This question was reported in Volume XXVII, page 722.

[*Latin ed. p. 315*]

315 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING NUNCERINE CONFRATERNITIES OF PAGAN ORIGIN, dated March 10, 1899. SUMMARY OF THE CASE. In the city of Nuceria, within the diocese, there exist two confraternities, one called that of Saint Francis of Paula, the other that of the Blessed Virgin Mary of Mount Carmel. The members of Saint Francis of Paula are canonically affiliated with the Third Order of the Minim Fathers. The members of the other confraternity are affiliated with the Third Order of Carmelites. Since a dispute arose between the two confraternities concerning precedence, the Bishop of Nuceria, by decree of February 17, 1898, decided that it should favor the members of the Carmelite order. From this decision, the members of Saint Francis of Paula appealed to the Holy Congregation of Bishops and Regulars. (Synopsis of the argument in favor of the members of the Third Order of the Blessed Virgin Mary of Mount Carmel. The members and the Bishop of Nuceria support the aforementioned decree of February 17, 1898, citing a rescript of the Superior General of the Carmelites dated September 9, 1882, in which permission was granted to the Carmelites to wear the Carmelite habit. The words of the rescript are: "We grant permission... that these members may and can use the Carmelite habit in the manner and form as described, on more solemn feasts, processions, and at funerals and other occasions where the habit is appropriate." Indeed, that the aforementioned rescript implies the true erection of the confraternity into the Third Order of Carmelites is testified to by the Superior General of the Carmelites himself, who, when asked by the Bishop of Nuceria whether the granted privilege of wearing the Carmelite habit entailed the aggregation of the confraternity to the Third Order of the Blessed Virgin Mary.

[*Latin ed. p. 316*]

316 From the Decrees of the Bishops and Regulations of the Order of Carmel, it is answered that the matter proceeds in this way. Therefore, since the Members of Saint Francis of Paula were incorporated into the Third Order of the Franciscans in the year 1884, it is fitting that they should, like a stream flowing into its bed, yield precedence to the Members of Carmel, according to the well-known saying: "First in time, stronger in right." Nor does the subsequent decree of the year 1887, favorable to the Members of Carmel, create a difficulty, by which their spiritual director, or chaplain, is granted by the Superior General of the Order of Carmel

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the faculties by which he may canonically and legitimately receive and admit all and each of the Brothers of the same Archiconfraternity, or those destined for the habit and profession of our sacred Third Order, according to the statutes and Rule of the same, observing all that is due by law, with the participation and communion of all the privileges... which all the religious members of the Order enjoy and possess. For, according to the General Procurator consulted in this matter, this subsequent decree is nothing more than a more explicit and solemn declaration of the privilege already granted in the prior decree. Furthermore, it would be a useless burden to argue that the Members of Carmel lacked canonical erection because of the absence of the consent of the Ordinary. The good pleasure of the Bishop of Nocera is easily demonstrated by several equivalent titles. In the year 1883, the Bishop of Nocera, Vitagliano, personally visited the church of the Archiconfraternity and was enrolled among the Members. In the same year, the question of precedence arose between the Members of Carmel and other Confraternities, and the Bishop of Nocera settled it in favor of the Tertiaries of Carmel. Moreover, it is added that, from the year 1882 until the present, according to the testimony of the parish priest of the church of the Most Holy Body of Christ, the Superiors of the Confraternity have annually rendered obedience to the Bishop of Nocera, wearing the Carmelite habit, and have always been admitted without contradiction. Finally, the Members of Carmel diligently note that right and fact must not be confused. For a Confraternity to be considered erected in the Third Order, only its legitimate existence is required.

[*Latin ed. p. 317*]

NUGERINA. PAGANORUM 317. An aggregation of laypersons to a Regular Order by the Superior General, with the consent of the Ordinary. The habit of the members, the novitiate, the profession of the rule, constitute and are the conditions, so that those attached to the Third Order may enjoy the privileges, graces, and indulgences thereof. If, from some accident, these conditions are not immediately fulfilled, it does not follow that the Third Order does not exist. Regarding the favor shown to the Minor Tertiaries. The members of Saint Francis of Paula, commonly called Paolotti, maintain that the true and legitimate attachment of the members of the Carmelite Order did not occur until the year 1887, and therefore, as older Tertiaries, they have the right to precedence in being admitted. In truth, according to the Bull *Paterna* of Pope Benedict VIII, the Third Order is a true religious order, since it possesses within itself all that is required of a religious order, namely, a rule approved by the Holy See, a novitiate, a profession, and a habit. Hence, for the attachment to the Third Order, the following is required: 1°. A diploma of aggregation from the respective General, by which the Spiritual Director, approved by the Ordinary, is granted the faculty of conferring the habit and admitting those aspiring

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to the Third Order to the novitiate, and of receiving their profession of the rule, so that they may participate in the indulgences. 2°. The consent of the local Ordinary is required, who must demand the execution of the diploma of aggregation granted by the General, by erecting the Third Order according to the resolution of the Holy Congregation of Indulgences and Holy Relics of January 21, 1893. Whether the consent of the local Ordinary is necessarily required for the erection of a new Congregation of the Third Order, whether in churches of Regular or Secular canons. The Holy Congregation responded: Affirmative. It is further required that the Third Order be truly constituted with a real habit, a novitiate, and a profession of the rule. However, these conditions could only take place after the rescript of the year 1887, as is evident from its text. Hence, the erection of the Carmelite members into the Third Order is posterior to that which occurred in the year 1884. But, according to the members of Saint Francis of Paula, the rescript of the year 1882 does not...

[*Latin ed. p. 318*]

318 FROM S. G. [Sacra Congregatio] EPI[SCOPORUM] ET REG[ULARIUM] holds a diploma of aggregation to the Third Order of Carmelites, but only a simple license to wear the Carmelite habit, and that not habitually, but according to the form chosen by the Carmelites themselves, as is evident from its wording. Furthermore, in this rescript, no priest is designated to bestow the habit, and no mention is made of the indulgences and privileges attached to the Third Order; therefore, it would be an injustice to consider it a diploma of aggregation to the Third Order. Moreover, even if it were granted, the Brothers of the Third Order [Minimi] maintain that, even if a rescript were granted to wear the Carmelite habit, it would not authorize the founding of a Confraternity of the Blessed Virgin Mary of Carmel in the Third Order, because, according to the procedures outlined in the aforementioned Bull of Benedict, it would have no validity, since it was not mandated for execution through the actual wearing of the habit, the Novitiate, and the Rule of Profession. Therefore, the founding of the Carmelite Sodality in the Third Order must be attributed not to the rescript of 1882, but to that of 1887; to consider the former as superfluous and useless would be incorrect. This is what the Brothers of St. Francis of Paula maintain, because, as the Bishop of Nocera confessed in a doubt proposed to the Holy Congregation of Sacred Rites in 1894, the Sodality of the Blessed Virgin Mary of Carmel was founded in 1883 for the honor of the Archiconfraternity, which could not be explained if it had already been established in the Third Order in the preceding year, 1882. With these considerations, the Most Reverend Fathers were asked to clarify the following doubt and how, in such a case, the decree of the Bishop of Nocera, attributing precedence to the Carmelites over the Third Order of the Minimi, could be maintained.

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RESOLUTION. The Holy Congregation of Bishops and Regulars, after mature deliberation, reformulated the doubt. Whether the Pio Sodality gives precedence to the Order of Carmelites, or rather to that of the Minimi, in such a case, responded: Affirmative to the first part, negative to the second.

[*Latin ed. p. 319*]

319 FROM THE HOLY CONGREGATION FOR RITES OF BISUNTINA, concerning the Beatification and Canonization of the Venerable Servant of God, Anthony Silvestri Receveur, Priest, Founder of a Christian Society. In the Royal Assemblies of the Congregation of Sacred Rites, held on the designated day at the Vatican, the Most Eminent and Reverend Lord Cardinal Lucidus M. Parrocchi, Bishop of Porto and S. Rufina, in place and instead of the Most Reverend and Eminent Cardinal Caietani Aloisi-Masella, as Relator for the Cause of Beatification and Canonization of the Venerable Servant of God, Anthony Silvestri Receveur, proposed the following question for discussion: Does it pertain to the validity of the processes, both those conducted by Apostolic and Ordinary authority, that the witnesses be duly and properly examined, and that the testimonies produced be legitimately obtained, in the case and for the purpose in question? And the Sacred Congregation itself, having considered all matters, and having heard the voice and written opinion of the Reverend Father, John B. Lugari, Promoter of the Holy Office, decided that the following answer should be given: Affirmative, that is to say, it is necessary, except for the testimonies, as stated in the Annotations § 9. On November 7, 1899. Subsequently, a report was made to His Most Holy Lord Leo XIII, Pope, by the undersigned Cardinal, Prefect of the Sacred Congregation for Rites, and His Holiness approved and confirmed the judgment of the Sacred Congregation itself, on the tenth day of the same month and year. C. CARD. MAZZELLA, Prefect. L. S. DIOMEDES PANICI, Secretary. FROM THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION: A QUESTION concerning whether it is permissible to attend discussions of physicians and experiments regarding hypnotic discussions. Most Blessed Father, N. N., Doctor of Medicine, prostrate at the feet of Your Holiness, humbly asks whether he may participate in discussions that are currently being held by the Society of Medical Sciences of N. concerning hypnotic suggestions in the treatment of sick children. This concerns not only the discussion of facts already completed, but also the undertaking of new experiments, whether they may be explained by natural reasons or not. And therefore, the speaker, in order not to expose himself to the danger of erring, awaits obediently the oracle of the Holy See.

[*Latin ed. p. 320*]

320 FROM THE APOSTOLIC PENITENTIARY, Thursday, July 26,

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1899. In a General Congregation held by the Most Reverend and Most Eminent Cardinals, General Inquisitors, with the aforementioned petitions presented, and with the vote of the Most Reverend Consultors, the same Most Reverend Fathers were commanded to respond: "Regarding experiments already carried out, it is permissible, provided that there is no danger of superstition or scandal; and furthermore, the petitioner must be prepared to abide by the mandates of the Holy See, and no theologian must be involved in the matter. Regarding new experiments, if they concern facts that certainly surpass the powers of nature, they are not permitted; but if there is doubt about this, with the prior declaration that no part will be taken in supernatural acts, they may be tolerated, provided that there is no danger of scandal." On the following Saturday, July 28 of the same month and year, in the usual audience granted by His Holiness Pope Leo XIII, Divine Providence, the Thirteenth, to the Most Reverend Father, the Assistant, after a report on all of this was made, the Most Holy Lord approved the response of the Most Reverend Fathers. I. CAN. MANCINI, S. R. and U. Inquisitor, Notary. FROM THE APOSTOLIC PENITENTIARY, A DOUBT concerning the suspension of indulgences. The following doubt was presented to this Apostolic Penitentiary by several local Ordinaries and confessors: Does the suspension of indulgences made by the Bull *Quod Pontificum*, issued on the eve of October of the year 1899, concerning the Jubilee, include, without any exception, the indulgences printed on the page, which are customarily granted by the Ordinaries and confessors for the internal forum? The Apostolic Penitentiary, after reporting this to the Most Holy Lord Pope Leo XIII, declares that this suspension does not extend to those penitents who, at the time of Confession, by the judgment of the Ordinary or confessor, cannot access the City without serious inconvenience. Given in Rome, in the Apostolic Penitentiary, on December 21, 1899. ALEXANDER C ARC ANI -S. P., Regent. ALOISIUS Can. MARTINI S. P., Secretary.

[*Latin ed. p. 321*]

FROM THE CONSISTORY ACTS: ADDRESS of His Holiness, Pope Leo XIII, given in the Consistory on December 14, 1899. Venerable Brothers, the celebration of the Jubilee, which We announced last May by Apostolic Letters, is now drawing near. We offer fitting and deserved thanks to You, O most High God: for it is through this single act that You will bring solace to Our old age, an act that Our heart has anticipated more than We dared to hope.

You know, venerable brothers, that it is customary to begin the Holy Year by opening the doors of the Patriarchal Basilicas, a practice greatly conducive to the awakening of piety. For, as Our predecessor, Benedict XIV, said, "The custom of publicly recalling to the minds of the faithful the practice of penance, and the public penance of those who are penitent,

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is a practice that prevailed in the early times of the Church."

The Pope opens the sacred doors of the Basilicas at the beginning of the universal Jubilee to all those who sincerely detest the blemishes of their conscience, and who readily undertake the works of piety, striving with all diligence to obtain the fruits of the Indulgence (1). Therefore, on the eve of the Nativity of Our Lord, following the example of Our predecessors, We ourselves, if God grants it, will open the sacred door of the Vatican Basilica.

Similarly, on the same day, the other Patriarchal Basilicas will be opened by Cardinals appointed as Our Legates. Following, therefore, the discipline and custom of the Church in this matter, with the authority of Almighty God, of the blessed Apostles Peter and Paul, and Our own, We choose and declare Our Legates, Our venerable brothers: Aloysius, Cardinal Oreglia, of the Holy Roman Church, Bishop of the Suburbicarian See of Ostia and Velletri, Dean of the Sacred College of Cardinals, who will open the sacred door of the Basilica of Saint Paul in Our name; and Francis, Cardinal Satolli, of the Holy Roman Church, Presbyter of the Title of Santa Maria in Aracoeli, Archpriest of the Basilica of the Lateran.

(1) Allocution, given in a secret Consistory, on December 1, 1749. Acts. Vol. XXXII. p. CCCLXXVIII. 21

[*Latin ed. p. 322*]

322 From the acts of the Consistory, let it be known that, in the name of Our Lord, Vincent, Cardinal Priest of the Titulus Sancti Silvestri in Capite, Archpriest of the Basilica Liberiana, shall open [the gate] of the same Basilica in Our name. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. Furthermore, We grant to the Legates the faculty to bestow a plenary indulgence, together with the Apostolic blessing, upon the people who are present at the opening of the sacred gates, by Our authority. Indeed, venerable brothers, we trust that the solemnities of this great Jubilee will not be without a salutary and future benefit. For, with the help of heavenly grace, a certain zeal for piety seems to have been aroused among the people, along with a desire to obey the exhortations of the Pope. It is announced, and often announced, throughout the nations, that many are considering a pilgrimage to Rome, for the purpose of expiating their sins. At this time, We greatly desire that the ancient form and habit of the Roman city be restored: so that, indeed, the tradition handed down by the fathers of practicing religion may be preserved without any impediment, even in the open city, with the customary public display, in accordance with the sanctity of the time, and that the ancient discipline and order may be recognized by the pilgrim from every nation. But, after the Pope, the liberty of Catholics has been curtailed; the temples are left solely to the piety of the inhabitants and visitors. Among these things, another misfortune has befallen this year, joined with an injury to the Holy See, and which, by the common opinion of men of incorrupt judgment, has been rightly

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condemned; which We, indeed, cannot silently endure. It is understood that the assembly of the highest Princes' Legates in The Hague, convened by the Most August Emperor of Russia, was to consider the establishment of a firmer peace, and to restrain both the frequency and the cruelty of wars. What could be more fitting for the advocacy of the Pope? To contend for justice, to reconcile peace, to prohibit discord, is inherently part of the highest pontificate: and this has been recognized by all ages, both in theory and in practice. Our predecessors have often fulfilled these duties with great benefit to the Christian nations, more than it is necessary to recount here. Truly, from the beginning, We have spontaneously supported this fruitful and noble undertaking with Our authority; and We also desire that it be carried out, and that it be, in every way, successful.

[*Latin ed. p. 323*]

FROM THE CONSISTORY ACTS 323, circumstances had inclined matters so that there would be a place for us in the Council of Hay. One voice, among all, was so persistent in its opposition, that it ultimately prevailed; and we say, it was the voice of those very ones who subjected the supreme governor of the Church to the destruction of the City [Rome]. What should we fear from such people, when they do not hesitate to inflict violence upon the sanctity of rights and offices which spontaneously arise from the apostolic office, in the very light of Europe? However, whatever the future may hold, we, with God's help, will neither connive at offenses, nor be intimidated. But our attention is now required by matters concerning the Orient. In the Patriarchate of Zülz, where the venerable brother Stephen Peter X Azarian had passed away in peace with Christ on the first of May, a synod, convened according to the laws, of Armenian bishops in the church of Constantinople, dedicated to the most holy name of Mary, was held for this purpose. On the twenty-sixth day of the preceding month of July, the Patriarch was elected by suffrage; the venerable brother Paul Emmanuelian, Bishop of Caesarea, was chosen, who is called Peter according to custom, the eleventh of that name. We have been informed by letters from the bishops themselves, who were present at the suffrage, of the entire matter; and they further requested that we would confirm him in the patriarchal dignity, whom they had raised to that office, with the authority of the apostles. The elected Patriarch also requests this, and, along with the sacred honor of the Pallium, he submits a written profession of the Catholic faith, according to the Urbanian formula, with the additions made by the holy Council of "Vatican." The excellent will of the venerable brother Paul Emmanuelian for the apostolic See, and the many ornaments of virtue, are profusely praised by the testimony of his fellow bishops. He has for a long time administered episcopal duties; he has earned the esteem and love of his people through counsel, teaching, and apostolic labors. For these reasons, and according to the opinion of the sacred Council, we have decided to approve his appoint-

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ment as head of the churches of the Eastern rite, along with the prayers of the bishops. Therefore, by the authority of Almighty God, and of the holy Apostles Peter and Paul, we confirm and approve the election made by the venerable Armenian brothers of Zülz, concerning the aforementioned Paul Emmanuelian, whom we absolve from the bond by which he was held to the Church of Caesarea, and we transfer him to the Patriarchal Church of Zülz of the Armenians, appointing him Patriarch and Pastor thereof.

[*Latin ed. p. 324*]

524 FROM THE ACTS OF THE CONSISTORY of the Church, as expressed in the decrees and records of the Consistory, notwithstanding any contrary provisions. In the name of the Father, and the Son, and the Holy Spirit. Amen. After delivering the aforementioned address, the Holy Father proposed the following appointments of churches: The Patriarchal Church of the Armenians of Cilicia, vacant by the death of the Most Reverend Stephen Peter X Azarian, the last Patriarch, who died outside the Roman Curia; with the favor of the Most Reverend Doctor Paul Emmanuelian, Bishop of Caesarea in Cappadocia, who was duly elected or nominated by the Catholic prelates of Cilicia, and who assumed the name of Paul Peter XI. The Cathedral Church of Alba, vacant by the death of the Most Reverend Isidore, of the Holy Roman Church, who, while still a Cardinal, was the last Bishop and died outside the Roman Curia; which was desired by His Eminence and Reverend Lord Anthony, of the Holy Roman Church, with the title of Presbyter Cardinal of the Saints Nereus and Achilles, Agliardi. The Metropolitan Church of Guadalajara in the Republic of Mexico, vacant by the death of the Most Reverend Peter Loxa and Pardavé, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Hyacinth Lopez, Archbishop of Linares. The titular Archiepiscopal Church of Pelusia, vacant by the death of the Most Reverend John Glavina, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Alphonsus Martin Larue, Bishop of Langres. The titular Archiepiscopal Church of Iconium, vacant by the death of the Most Reverend Aloysius Puecher Passavalli, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Raphael Siro Hi, Bishop of Aquinate, Sorani, and Pontis Curvi. The Metropolitan Church of Rheims, vacant by the death of the Most Reverend William Mary of Rome, of the Holy Roman Church, who, while still a Presbyter Cardinal, was the last Archbishop and died outside the Roman Curia, with the favor of the Most Reverend Doctor Frederick Fuzet, Bishop of Beauvais. The Metropolitan Church of Albi, vacant by the death of the Most Reverend John Fonteneau, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Eudoxius Edward Hirenaeus Mignot, Bishop of Friuli. The Metropolitan Church of Cologne, vacant by the death of

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the Most Reverend Philip, of the Holy Roman Church, who, while still a Presbyter Cardinal, was the last Archbishop and died outside the Roman Curia, with the favor of the Most Reverend Doctor Theophilus Hubert Simar, Bishop of Paderborn. The Metropolitan Churches of Acheruntia and Matherana, perpetually and canonically united with each other, vacant by the translation of the Most Reverend Doctor Diomedes Falconio to the titular Archiepiscopal Church of Larissa, with the favor of the Most Reverend Doctor Raphael Rossi, Bishop of Bova. The Metropolitan Church of Toulouse, vacant by the free and voluntary resignation of His Eminence and Reverend Lord Francis Desideratus, of the Holy Roman Church, with the title of Presbyter Cardinal of Sabina, Mathieu, which was accepted by the aforementioned HOLY SEE, with the favor of the Most Reverend Doctor John Augustine Germain, Bishop of Rodez et Vabres.

[*Latin ed. p. 325*]

FROM THE CONSISTORY ACTS 525: The Metropolitan Church of Prague is vacant, due to the death of the Most Reverend Francis, formerly Cardinal of Schoenborn, last Archbishop outside the Roman Curia, with the favor of the Right Reverend Leo, Baron of Skrbensky, a priest of the archdiocese of Olmütz. He was born of legitimate, Catholic, and noble parents in the place called Hausdorf in the archdiocese of Olmütz, and has now reached the thirty-seventh year of his age. The titular episcopal see of Lystra is vacant, due to the death of the Most Reverend Gonzalo Canilla, last Bishop outside the Roman Curia, with the favor of the Right Reverend Anthony Ruiz-Cabal and Rodríguez, Bishop of Pamplona and Tudela. The cathedral church of Pamplona, to which, by Apostolic Letters entitled "Ad Vicariam," dated the ninth of September 1851, the church of Tudela is joined, is vacant, due to the voluntary and willing resignation of the Right Reverend Anthony Ruiz-Cabal and Rodríguez, which was carried out and accepted by the SUPREME HOLINESS, and his subsequent transfer to the titular episcopal see of Lystra, with the favor of the Right Reverend Joseph Lopez Mendoza and Garcia, of the Order of the Eremites of Saint Augustine, Bishop of Jaca. The cathedral churches of Luceria and Zhytomyr, perpetually and canonically united, are vacant, due to the death of the Most Reverend Cyril Lubowidzki, last Bishop outside the Roman Curia, with the favor of the Right Reverend Boleslaus Jerome Klopotowski, titular Bishop of Eleutheropolis and Suffragan of Luceria and Zhytomyr. The cathedral church of Zacatecas in the Republic of Mexico is vacant, due to the death of the Most Reverend Bonaventure Portillo, last Bishop outside the Roman Curia, with the favor of the Right Reverend Joseph Alva, of the Order of the Minor Friars, Bishop of Yucatán. The cathedral church of Mandoledo, with the attached title of the abbatial church of Saint Savior Major, is vacant, due to the transfer of the Right Reverend Dominic Ambrose to the united churches of Terracina, Priverno, and Setia, with the

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favor of the Right Reverend Joseph Gandulfi, a priest of Aesi. He was born of legitimate, Catholic, and honest parents in Aesi, and has now reached the forty-second year of his age. He was received among the students of the Pontifical Seminary of Pius, and later fulfilled the duties of Professor of philosophy in the seminary and as Vicar Capitular, during the vacancy of the see. Furthermore, he was co-opted among the Domestic Prelates of the SUPREME HOLINESS. He has also been appointed Examiner, pro-synodal administrator, General Vicar, and Canon of the cathedral church, and has recently resigned from these offices. The cathedral church of Cotrone is vacant, due to the death of the Most Reverend Joseph Cavaliere, last Bishop outside the Roman Curia, with the favor of Emmanuel Merra, a priest of Andria. He was born of legitimate, Catholic, and honest parents in Andria, and has now reached the sixty-second year of his age. He was first appointed among the intimate Cubicular Assistants of the SUPREME HOLINESS, and then among the Apostolic Protonotaries, ad instar participantium. The cathedral church of Acerra is vacant, due to the death of the Most Reverend Hyacinth Magliuolo, last Bishop outside the Roman Curia, with the favor of the Right Reverend Francis De Pietro, a priest of Naples. He was born of legitimate, Catholic, and honest parents in Naples, and has surpassed the fifty-fourth year of his age. Having recently received the sacred order of the priesthood, he resigned from his position as parish priest of the church under the title of the Most Holy Ascension, which he held for nine years. The cathedral churches of Gravina and Montepeloso, perpetually and canonically united, are vacant, due to the death of the Most Reverend Vincent Salvatore, last Bishop of those sees.

[*Latin ed. p. 326*]

326 FROM THE CONSISTORY ACTS: In Usküb, a certain priest, Father Christopher Maielio, of the diocese of Aversa, has passed away. He was born of legitimate, Catholic, and honorable parents in the town commonly called Aprano, in the diocese of Aversa, and, having reached the thirty-eighth year of his age, he held the office of Examining Prelate before the synod and had been a renunciate Vicar Forane. Most recently, he was appointed as the pastor of the parish church of Saint Mary, commonly known as "di Costantinopoli," in the city of Aversa. The cathedral churches of Aquin, Pons, and Sorano, are perpetually and canonically united among themselves, and are now vacant, due to the promotion of Father Raphael Sirolli to the titular archbishopric of Iconium, with the favor of Father Luke Bucci, of the Order of the Friars Minor, a priest of the archdiocese of Lanciano. Father Luke, in the world Raphael Bucci, was born of legitimate, Catholic, and honorable parents in the place commonly called Castelnuovo, in the archdiocese of Lanciano, and, having reached the eighty-eighth year of his age, entered the Order of the Friars Minor in his youth, and diligently performed various and most important offices within his Order, especially

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as Secretary of the Custody of the Holy Land and as Provincial Vicar General of the Vicariate and Apostolic Delegation of Alexandria in Egypt. The cathedral church of Jacena is vacant, due to the translation of Father Joseph Lopez Mendoza and Garcia to the cathedral seat of Pamplona, with the favor of Father Francis Valdés and Noriega, of the Order of the Eremites of Saint Augustine, and a priest of the diocese of Oviedo. The titular episcopal church of Eudoxiaden, under the Archbishop of Pessinuntio, is vacant, due to the death of the Reverend Monsignor Peter Anthony Antivari, the last of that number to have died outside the Roman Curia, with the favor of the Reverend Father Francis Di Costanzo, a priest of Cava de' Tirreni, who was also appointed as an Auxiliary to the Reverend Monsignor Angel Michael Onorati, Bishop of Tricarico. The titular archbishopric of Larissa is vacant, due to the assignment of the titular presbyteral church of Saint Callistus, made by His Most Excellent and Reverend Lord Augustine, Cardinal of the Holy Roman Church, with the favor of the Reverend Father Diomedes Falconio, Archbishop of Acheruntia and Mathera. The titular archbishopric of Miren is vacant, due to the death of the Reverend Monsignor Joseph Mary Guideiii Guidi, the last of that number to have died outside the Roman Curia, with the favor of the Reverend Father Joseph Ceppetelli, titular Bishop of Tiberias. The titular archbishopric of Tyana is vacant, due to the promotion of Father Alexander Samminiatelli Zabarella to the Patriarchal Church of Constantinople, with the favor of Father Amilcar Tonietti, Bishop of Ucin. The titular archbishopric of Edessa is vacant, due to the death of the Reverend Monsignor Philip Castracana degli Antelminelli, the last of that number to have died outside the Roman Curia, with the favor of the Reverend Father January Granito Pignatelli e Principibus Di Belmonte, a priest of Naples. The cathedral churches of Terracina, Priverno, and Setin, are perpetually and canonically united among themselves, and are now vacant, due to the translation of Father Paul Aemilius Bergamaschi to the cathedral church of Troia, with the favor of Father Dominic Ambrose, Bishop of Mandelensis. The cathedral church of Ilci is vacant, due to the promotion of Father Amilcar Tonietti to the titular archbishopric of Tyana, with the favor of Father Iader Bertini, a priest of Siena. The cathedral church of Apua is vacant, due to the promotion of Father Alphonsus Mary Mistrangelo to the metropolitan church of Florence, with the favor of Father Francis, of the Order of the Friars Minor.

[*Latin ed. p. 327*]

FROM THE CONSISTORY ACTS 327. Angels, during the lifetime of Anthony Fiorini, a priest of the Order of the Capuchin Friars, of the same diocese of Apua. The Cathedral Church of Namur is vacant, due to the death of the Most Reverend Monsignor Stanislaus John Baptist Decrolière, the last bishop, who died outside the Roman Curia, with the favor of the Reverend Father Thomas Heylen, of the Prémontré Order, a priest of the archdiocese

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of Mechlin. The Cathedral Church of Saint Louis of Maragnano in Brazil is vacant, due to the translation of the Reverend Father Dominic Anthony Candidi de Alvarenga to the Cathedral See of Saint Paul in Brazil, with the favor of the Reverend Father Aloysius Francis Salesius Pessoa, a priest of the diocese of Olinda. The titular Episcopal Church of Ascalon is vacant, under the Archbishop of Caesarea, due to the death of the Most Reverend Monsignor Alexander Cañal, the last bishop, who died outside the Roman Curia, with the favor of the Reverend Father Aloysius Finoia, a priest of Naples. He was also appointed as a coadjutor with future succession to the Reverend Father Bernard Anthony de Riso, Bishop of Cataca. The titular Episcopal Church of Tiberias is vacant, under the Archbishop of Scythopolis, due to the promotion of the Reverend Father Joseph Ceppetelli to the titular Archbishopric of Myra, with the favor of the Reverend Father Aloysius Spandre, a priest of the archdiocese of Turin. He was also appointed as an Auxiliary to the Most Reverend and Right Reverend Augustine, in the title of Saint Eusebius, the Reverend Cardinal Richelmy, Archbishop of Turin, for pontifical and other pastoral duties in that city and archdiocese, to be carried out diligently and fruitfully in the Lord, according to his will and consent. The titular Episcopal Church of Amisen is vacant, under the Archbishop of Amaseno, due to the succession of the Reverend Father John Edmund Fitzmaurice to the Cathedral See of Erie, with the favor of the Reverend Father Aquilin Ferreira, a priest of the diocese of Cordoba in America. He was also appointed as an Auxiliary to the Reverend Father Reginald Toro, Bishop of Cordoba in America. The titular Episcopal Church of Circesium is vacant, under the Archbishop of Edessa, due to the death of the Most Reverend Monsignor John Baptist Simon, the last bishop, who died outside the Roman Curia, with the favor of the Reverend Father Philemon Cabanillas, a priest of the diocese of Cordoba in America. He was also appointed as another Auxiliary to the Reverend Father Reginald Toro, Bishop of Cordoba in America, for pontifical and other pastoral duties in that city and diocese, to be carried out diligently and fruitfully in the Lord, according to his will and consent. The Cathedral Church of Foro Julien is vacant, due to the promotion of the Reverend Father Eudoxius Edward Hirenaei Mignot to the Metropolitan See of Albi, with the favor of the Reverend Father Joseph Eugene Arnaud, a priest of the diocese of Marseilles, due to the nomination of the illustrious Mr. Emile Loubet, President of the French Republic. The Cathedral Church of Bellovacum is vacant, due to the promotion of the Reverend Father Frederick Fuxet to the Metropolitan Church of Rouen, with the favor of the Reverend Father Mary Celestine Douais, a priest of the diocese of Montpellier, due to the nomination of the illustrious Mr. Emile Loubet, President of the French Republic. The Cathedral Church of Gratianopolitan is vacant, due to the death of the Most Reverend Monsignor Amand Fava, the last bishop, who died outside the Roman Curia, with the favor of the Reverend Father Paul Emile Marie

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Joseph Henry, a priest of the archdiocese of Algiers. The Cathedral Church of Ajaccio is vacant, due to the death of the Most Reverend Monsignor Paul Matthew de la Foata, the last bishop, who died outside the Roman Curia, with the favor of the Reverend Father Aloysius Olivieri, a priest of the diocese of Ajaccio.

[*Latin ed. p. 328*]

328 FROM THE CONSISTORY ACTS: The Cathedral Church of Lingon is vacant, due to the voluntary and free resignation of the Reverend Father Alphonse Martin Larue, which has been accepted by HIS HOLINESS, and the subsequent promotion to the titular Archbishopric of Pelusia, granted to the Reverend Sebastian Herscher, a priest of the diocese of Strasbourg. The Cathedral Church of Engolsm is vacant, due to the death of the Reverend Monsignor John Baptist Frérot, the last bishop, who died outside the Roman curia, granted to the Reverend John Louis Mando, a priest of the diocese of Saint-Brieuc and Tréguier. The Cathedral Church of Tarbien is vacant, due to the death of the Reverend Monsignor Prosper Mary Billère, the last bishop, who died outside the Roman curia, granted to the Reverend Father Francis Xavier Schoepfer, a priest of the diocese of Strasbourg. The Cathedral Church of Corisopiten and Leonen is vacant, due to the death of the Reverend Monsignor Henry Felix Valleau, the last bishop, who died outside the Roman curia, granted to the Reverend Father Francis Virgil Dubillard, a priest of the archdiocese of Besançon. The Cathedral Church of Ruthenen is vacant, due to the promotion of the Reverend Father John Augustine Germain to the Metropolitan Church of Toulouse, granted to the Reverend Father Louis Eugene Francqueville, a priest of the diocese of Amiens. The Cathedral Church of Einen is vacant, due to the death of the Reverend Monsignor Natalis Matthew Victor Mary Goussail, the last bishop, who died outside the Roman curia, granted to the Reverend Father Julius Mary Louis de Carsalade du Pont, a priest of the archdiocese of Auch. The Cathedral Church of Saint Peter, also known as Martinen, is vacant, due to the death of the Reverend Monsignor Joseph Stephen Frederick Tanoux, the last bishop, who died outside the Roman curia, granted to the Reverend Father Mary Charles Alaphridi de Cormont, a priest of Paris.

S. PENITENTIARIA APOSTOLICA: EXCERPTS FROM THE CONSTITUTION OF BENEDICT XIV, which begins "Convocatis" and from another, beginning "Inter praeteritos de usu facultatum confessariis tributarum occasione Iubilaei," published for the benefit of confessors, by order of the Most Holy Lord Our Pope Leo XIII, by divine providence.

It is clear that the special faculties, which are often granted to confessors and minor penitentiaries during the Holy Jubilee, must be administered intelligently and cautiously, that is, with reason and judgment. If they are used rashly, inconsiderately, and negligently, they can easily lead to a disruption of discipline, and indeed, they will not achieve their true and solid

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purpose, which is the good of souls, but rather will be frustrated. Therefore, Benedict XIV, having granted these extraordinary faculties for the sake of the Holy Jubilee,

[*Latin ed. p. 329*]

FROM THE APOSTOLIC PENITENTIARY, 329. The Apostolic Constitution, having appended warnings concerning the prudent and correct use thereof, commanded with grave authority that Confessors diligently attend to these matters and follow them so that they may be the safest and most inviolable norm. It also pleased the Most Holy Pope Leo XIII: who, having considered the wisdom and utility of this decree, judged it necessary to renew the example of his predecessor. Indeed, in those very Apostolic Letters which he recently issued concerning indulgences, he ordered that these Benedictine warnings be published separately for the convenience and guidance of Confessors, although they have been somewhat modified to suit the times, so that they may be understood and observed in the manner in which they are written below:

I. First, let Confessors diligently observe what is established in the Constitution *Sacramentum Poenitentiae* concerning accomplices, in chapter VI, by Benedict XIV in the year 1741. Except, of course, for the crime of an accomplice, which has been admitted once or twice, in which case the faculty is granted.

II. Let them note that absolutions, commutations, and dispensations, the power to exercise which has been granted to them, cannot be exercised by them outside the act of sacramental Confession, nor can these same things be exercised by minor Confessors, whether ordinary or extraordinary, outside their own basilica or church, unless in cases otherwise permitted or to be permitted to them by the Major Penitentiary; or in the case of administering the Sacrament of Penance to someone who is infirm, and who, due to the cause of bodily illness, cannot personally access the basilicas or churches designated to them, and who has summoned one of them to complete the Sacramental Confession for the attainment of the Jubilee (according to § 25).

III. Let them not fail to impose a salutary penance on each penitent in the Sacrament, lest, under the pretext of obtaining the Jubilee, the same penitent should be exempted from it (according to § 26).

IV. Let them not absolve anyone from occult sins, under pain of incurring a penalty, until the offending party has made amends to the injured party; or, if the offending party cannot make amends, let them not absolve him, unless he seriously promises to do so when he is able.

V. In public censures, the absolution of which is granted to minor Confessors, consideration shall be given to the aforementioned satisfaction, according to the practice of the Apostolic Penitentiary, to which they should

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be directed.

[*Latin ed. p. 330*]

330 FROM THE APOSTOLIC PENITENTIARY: A penitent, when presenting a written petition, in which, expressing his name, surname, and diocese, and having been subjected to this type of public censure, writes below: "The Confessor testifies that absolution from said censure has been granted." Thus, from the Office of the Penitentiary, he will receive a Brief in the prescribed form of dispensation or remission, according to the practice of that Office (from the same Bull, §§ 5 and 27). VI. Those who violate the enclosure of nuns for an evil purpose, even in hidden cases, shall be imposed with the prohibition of ever entering that monastery, and its church again, warning the penitents that they are absolved from the censures incurred due to the aforementioned violation, provided that if they do not observe the imposed prohibition, they will thereby relapse into those same censures. However, if the circumstances of the penitent and the place are such that the aforementioned condition cannot be enforced, consultation shall be held with the Cardinal Major Penitentiary, who, according to his prudence, may grant dispensation in such cases when necessity demands it (from § 28). VII. Religious who violate their enclosure through the introduction of women for an "evil purpose" shall be absolved from the censures incurred, but without any dispensation regarding the further impediment contracted by this action in relation to attaining the dignities and offices of their Order (from § 29). VIII. They shall not be absolved from the reading of prohibited books, especially those designated in the Apostolic Constitution, before the penitent has delivered the books, which are in his possession, to the Inquisitor, or Ordinary, or to the Confessor himself, or to another who has the authority to retain them, or has promised to deliver them as soon as possible, if he cannot deliver them before absolution (from § 30). IX. Regulars who have apostatized or fled from their Order shall not be absolved as long as they remain outside the Order, unless they have a firm intention of returning to their Order; however, at a suitable time previously determined for this purpose, absolution shall be granted to them with a warning, so that they understand that if that term expires, they will be considered to have relapsed into the same sentence and censures to which they were previously subject: and during this aforementioned term, they shall be warned that it is forbidden for them to exercise the sacred orders, until they have resumed their habit and returned to their Religion under the obedience of their Superiors (from § 32 and from the table of faculties granted to Penitentiaries). X. To those who intend to come to Rome to attain the Jubilee, it is not understood that they have been granted the

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freedom to come without obtaining...

[*Latin ed. p. 331*]

FROM THE APOSTOLIC PENITENTIARY, 551, otherwise necessarily with the consent of their respective Superiors (from § 43). XI. By the appellation of "Romans," with regard to the visits to the four Basilicas to be made over twenty days, are included all those born and residing in Rome, as well as those born and residing in the suburban district of vineyards within the fifth milestone from the City. For the same purpose, by the term "inhabitants" are understood all those who hold a certain office in the City, or who are there awaiting the opportunity to obtain it, and therefore acquire a domicile there, and all those who have come to the same City or to any suburban place within the fifth milestone, as mentioned above, for any reason whatsoever, other than to gain the benefits of the present Jubilee, or, if they have come to the City for the purpose of gaining the Jubilee, they are nevertheless of the intention to reside there for a greater part of the year, or for more than six months. All others are to understand that they are included under the name of "Pilgrims or Outsiders," with regard to the visits to the same Basilicas to be made over ten days (from § 44). XII. Confession and Communion, prescribed for gaining the Jubilee, do not necessarily have to precede the visits to the four Basilicas. It will be sufficient to receive the Sacraments of Confession and Communion either during the course of these visits, or even after they have been completed (from § 45). XIII. Since Confession is a prescribed work, even he who is burdened only with venial sins must perform it if he wishes to gain the Jubilee (from § 46). XIV. If anyone, after having made Confession, should fall into a mortal sin (may God prevent it), before having completely fulfilled all the works prescribed for gaining the Jubilee, he must make Confession again, before completing at least one of the other prescribed works, in order to obtain the Indulgence attached to the Jubilee (from § 47). XV. Although Communion is prescribed, children who have not yet been admitted to their First Communion should not, within the Holy Year, be admitted, at the judgment of their own parish priests or confessors; they may be considered legitimately excused from this prescribed work, and Communion will be substituted for them in another pious work, as prescribed by the confessor (from § 48). XVI. To fulfill the prescribed visit to the Basilicas, it is not necessary to enter or leave the same Basilicas through the Holy Doors, or through any of their doors (from § 49).

[*Latin ed. p. 332*]

332 FROM THE APOSTOLIC PENITENTIARY, SECTION XVII. If, concerning indulgences, a decree should be issued reducing the previously prescribed number of visits, then anyone who, before such a decree, has already completed a certain number of visits to the basilicas, will be able

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to count those visits already made towards fulfilling the number of visits prescribed by the indulgence, adding to them only those that are lacking to reach the total specified by the indulgence. However, if the total or number prescribed by the indulgence has already been completed, or even exceeded, at least one day of visits to the four basilicas must be added, so that he may be able to benefit from the indulgence (from § 50 and from Constitution *Inter praeteritos*, § 82).

XVIII. The prescribed pious prayers, to be recited during the visit to the basilicas, which have been presented to His Holiness and are expressed in the bull of indiction, are sufficient if they are recited vocally. He who wishes to pray silently for those same intentions is to be commended; however, he should also add at least some vocal prayer (from § 51).

XIX. Whoever, during the time of the Holy Year, has completely and repeatedly performed all the works, initially prescribed in the proclamation of this Jubilee, or, should an indulgence be granted, those works prescribed in the concession of that indulgence for the attainment of the same Jubilee; or who has repeatedly performed them, first according to the form of the proclamation, then according to the form of the indulgence, or first according to the form of one indulgence, then perhaps according to the form of another, as is preferred, will also be able to gain the benefits of the Holy Year twice or more. Thus, considering the annual period to which this Jubilee extends, His Holiness has, with the fullness of Apostolic liberality, decreed that he may enjoy it, provided that whoever has once partaken of these graces, upon first obtaining the Jubilee or upon completing all the prescribed works, will not be able to again partake of them, if, after first obtaining the Jubilee, he incurs censures, or commits reserved sins, or requires new dispensations or commutations of vows (from *Convocatis*, § 52; from *Inter praeteritos*, § 84). However, if, for some reason, the need for these graces should arise only after the Jubilee has been obtained, or after all the prescribed works have been completed, His Holiness benignly grants that he may enjoy these graces once.

XX. Absolution from censures, except those granted for a recurrence of sin; also, commutations of vows and dispensations, according to the faculties granted for the respective Jubilees, are granted once.

[*Latin ed. p. 333*]

XXXIII. Those who have already obtained [indulgences] from the Apostolic Penitentiary, and if it should happen that, after obtaining them, they change their plans, with a sincere and serious intention of gaining this Jubilee, and therefore of fulfilling the necessary works required for obtaining it, shall not labor further to obtain the same Jubilee (from § 54).

XXI. The suspension of the faculties of absolving, dispensing, etc., for the Holy Year, announced by the Apostolic Letters of Our Most Holy Lord, dated the Eve of October of the current year, does not include the very

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City of Rome, in which, at this time, the supply of workers and assistance for the expeditious conversion of penitents is most abundant and is not diminished. Therefore, those who are found in that venerable City, legitimately endowed with such faculties, may freely exercise them also during this year, in that City, according to the tenor and the previously defined time of each concession obtained (from § 55).

XXII. Outside the City, however, the suspension of the faculties mentioned in the aforementioned Letters must be observed completely, by which, His Holiness declares that, during the aforementioned year, not only those faculties which have been granted for the sake or occasion of Indulgences, but also all other faculties granted under any other title and cause, must be considered suspended; except for those which have been expressly preserved from the general suspension mentioned in the aforementioned Letters (from § 56).

XXIII. Furthermore, it must be remembered that, only those who are truly penitent and absolved are to be understood as having made a true Confession: therefore, Confession is absolutely necessary for obtaining the Jubilee, and a Confession made in intention alone is not sufficient. Also, the Sacramental Communion must be received, both materially and spiritually, which, according to the teaching of the Council of Trent (Session 13, Chapter 8), is for those who have previously prepared themselves and instructed themselves so that they may approach the divine table clothed in wedding garments: hence, the Jubilee is not gained by those who receive the Eucharist only sacramentally, as sinners; nor by those who receive it only spiritually, that is, by those who eat that heavenly bread only by intention, with living faith which works through love, and do not experience its fruit and benefit. (From Constitution Bened. XIV. - Among the preceding §§ 2. 7).

XXIV. The visit to the four Basilicas must be made in one day, or, that is, from one to another during the night, or from the vespers of the preceding day until the vespers of the following day (From the cited Bull, §§ 11. 13).

[*Latin ed. p. 334*]

334 FROM THE APOSTOLIC PENITENTIARY, SECTION XXV. Let the lesser Penitentiaries, and other confessors, be upon be aware that, for the sake of the Jubilee, they are endowed with faculties, notwithstanding the amplitude of words concerning all sins and excesses, however grave and enormous, to grant dispensations, provided that they do not, in any way, contravene what is forbidden to them in the Constitution "Pastor bonus" to the Major Penitentiary Cardinal, as, for example, those who, while the Roman Pontiff lives, have engaged in discussions concerning the election of his Successor, have collected votes, or have made agreements, and those who have, through themselves or others, inquired into the state of the Christian republic, or into the life or death of the Roman Pontiff then living,

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through judicial astrology. If anyone falls into any of the aforementioned cases, let them approach the Major Penitentiary Cardinal, to whom appropriate and necessary remedies will be prescribed by His Holiness. (From the cited Bull, § 39). XXVI. The faculty of changing vows through dispensation is distinguished from a simple and straightforward commutation, which would require a substitution of a matter almost equal in value: but a commutation mixed with dispensation is capable of true inequality between the matter of the vow and the thing substituted. XXVII. Since the visitation of basilicas is not a task to which anyone is obligated by any precept, but a new burden imposed to obtain the Indulgence, a change of the same cannot be made to other works to which the penitent is bound by another title (ibid. § 53). These warnings, clearly set forth in the aforementioned Constitutions of Benedict XIV, Our Most Holy Lord has ordered to be brought to light again, so that from their very prescription, a most secure rule may be available in the care of souls; and so that credence may be given to the present collection, He has ordered that it be signed by someone from the Sacred Penitentiary Office, with the seal of that Tribunal affixed. Given in Rome, from the Sacred Penitentiary, in the year of the Incarnation of the Lord, one thousand eight hundred and ninety-nine, on the Kalends of November, in the twenty-second year of the pontificate of Our Most Holy Lord Leo XIII.

[*Latin ed. p. 335*]

FROM THE APOSTOLIC PENITENTIARY 335 FROM THE SAME APOSTOLIC PENITENTIARY: The following was inquired about: Whether the faculties granted to Bishops or Ordinaries by the Holy See for the external forum are suspended by the Bull "Quod Pontificum" during the Jubilee year? The Apostolic Penitentiary responds: No. Given in Rome, in the Apostolic Penitentiary, on the 26th of December, 1899. A. CARCANI, Secretary of Grace. A. CAN. MARTINI, Secretary.

FROM THE SACRED CONGREGATION FOR RITES: Regarding the faculty of dedicating oneself to the Sacred Heart of Jesus. Most Illustrious and Reverend Lord, By the Encyclical Letters "Annus Sacrum" issued on the 25th of May of this year, concerning "men dedicated to the Most Sacred Heart of Jesus," Our Holy Father Leo XIII expressed hope and confidence that great good would result, not only for individuals, but also for the entire Christian Family; this singular consensus and prompt willingness of a certain Christian people has confirmed and increased this. For as soon as the voice of the Supreme Pastor was heard, calling the world to offer a divine sacrifice of charity to Him and to dedicate themselves entirely to Him, the Roman people, first of all, and then not only Italy, but also all of Europe and many distant regions, seemed to agree that they would conform themselves to the wishes and will of the Supreme Pontiff. All of these things have brought such joy that I have sufficiently indicated it [in

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letters of the 21st of July of this year, in which, by the order and in the name of the Holy Father, I congratulated you and all of your clergy greatly, and offered thanks]. Now, it has been brought to our attention that the aforementioned Encyclical Letters reached some more distant regions later than the time required for the completion of the matter. Therefore, to Your Eminence,

[*Latin ed. p. 336*]

336 From the Sacred Congregation of Rites, humble petitions have been presented, so that this pious desire might also be fulfilled; it was granted to those very individuals the power to devote themselves to the Most Sacred Heart of Jesus, under the same conditions, as if they had, at the proper time, given this solemn testimony of religion with the others. To this petition, the Most Blessed Father, graciously consenting, and even more generously, conceded that not only the faithful to whom the Encyclical Letters arrived later, but all who have repeated the form of consecration on the solemn day of the Most Sacred Heart of Jesus, or on the immediately following Sunday, and have observed the other prescribed things, may enjoy the very special privileges expressed in the aforementioned Apostolic Letters. From these things, it is easily understood how much care the Supreme Pontiff takes for this form of piety and for all those who, throughout the world, dedicate themselves to the Most Sacred Heart of Jesus. For the Most Blessed Father, as He has decreed, believes that only then will all the wounds inflicted upon human society be healed, that all right may return to the example of its former authority, that the ornaments of peace may be restored, when "And that every tongue should confess that the Lord Jesus Christ is in the glory of God the Father." I harbor a firm hope that individual prelates, with the zeal and diligence of which they have given such a brilliant example up to now, will spare no effort in the future to ensure that as many children of the Church as possible, availing themselves of the Apostolic generosity, may be united to Christ, and "draw water with joy from the wells of the Savior." In the meantime, I earnestly pray for all good things for Your Eminence. Rome, from the Secretariat of the Congregation of Sacred Rites, on the 27th of November, in the year 1899. To Your Eminence, as a devoted brother, C. CARD. MAZZELLA, S. B. C., Prefect. L. * S. DIOMEDES PANICI, S. B. C., Secretary.

[*Latin ed. p. 337*]

FROM THE SACRED RITUALS, 537: Permission is granted to celebrate Mass at midnight on December 31, 1899, in the city and throughout the world. As the blessed year, happily begun by our Most Holy Father and Lord, Pope Leo XIII, is about to be celebrated, it is most fitting that those who rise at night should approach the Author of the age, to prostrate themselves before His altars, to offer the most acceptable Host, that is, the Divine

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Lamb, and to participate in the sacred communion, so that at the most opportune time, it may be possible to find help, grace, and mercy: "And that, knowing the season, that it is now the hour for us to rise from sleep. For now our salvation is nearer than when we believed." Behold, now is the time of favor; behold, now is the day of salvation. Since the Kingdom of Heaven, that is, the Church of the present time, is likened to the ten virgins who went out to meet the bridegroom at night, it is especially fitting that, on this most solemn occasion, each one should more attentively direct their mind to those sacred words: "Watch therefore, for you know not when the master of the house comes, at evening, or at midnight, or at cock-crowing, or at break of day, lest he come suddenly and find you sleeping. Watch therefore; for you know not when the hour will come." Moreover, since the middle of the night of the last day of December of the coming year marks the end of the present age and the beginning of a new one, it is highly appropriate that thanks should be given to God, with a certain pious and solemn rite, for the benefits received during this past century, and that better things should be sought, especially in these times of urgent need, for entering into the new century. Therefore, that the coming year of 1900 may take its beginnings under the auspices of the help implored from God and His only-begotten Son, our Savior, and that it may end with a prosperous course, and, as it is fitting to hope, bring a more blessed age; Our Most Holy Lord, Pope Leo XIII, benignly grants that on December 31st, both of the expiring year and of the coming year, at midnight, in the churches and chapels where the Most Holy Eucharist is duly reserved, the most august Sacrament may be exposed for adoration, according to the prudent judgment of the Ordinary of each place; and that the same Mass, according to the feast of the Circumcision of the Lord and the Octave of the Nativity, may be read or sung at that hour before it; and that the faithful, both within and outside the action of the Sacrifice, may receive the sacred communion for a special grace, with all due observances. Contrary decrees notwithstanding. Given on November 13th, in the year 1899. C. CARD. MAZZELLA, S. B. C. Prefect. L. © S. DIOMEDES PANICI, Acts, Volume XXXII, page CCCLXXVIII. S. R. C. Secretary. 22

[*Latin ed. p. 338*]

358 FROM THE SACRED RITUALS OF THE CITY AND THE WORLD. It extends to the entire Church, with the addition of the title of Doctor, the Office and Mass of Saint Bede the Venerable. In order that the honor and cult of Saint Bede the Venerable, adorned with the praises of so many illustrious writers and supreme Pontiffs, may be increased, several sacred prelates, especially from England, earnestly requested, through supplications addressed to Pope Pius IX of blessed memory, and most recently through reiterated prayers presented to the Most Holy Lord Pope Leo XIII, that the feast day of this saint and eminent Confessor may be celebrated

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throughout the Catholic world with the proper Office and Mass, as befits a Doctor of the Church, as has already been granted in some places and to all the Benedictine and Cistercian communities. They also recalled the words of the Venerable Cardinal Bellarmine with great joy and hope: "Bede illuminated the West; Damasus illuminated the East"; affirming that all that is required, according to what is laid down by Benedict XIV in *De Canonizatione Sanctorum*, book IV, part 2, chapter 11, number 13, for granting the title of Doctor of the Church, fully applies to Saint Bede. It was decided that the Most Holy Lord Pope should entrust the examination of such a weighty matter to the Congregation of Sacred Rites. This Congregation, after carefully considering the matter with the support of the most learned men, and in its Ordinary Assemblies held on July 11th of this year at the Vatican, received the following question from the Cardinal Prefect and Relator of the aforementioned Sacred Congregation, to be discussed and examined: "Whether the feast of Saint Bede the Venerable, with the proper Office and Mass, and with the addition of the title of Doctor, should be extended to the entire Church?" And the Sacred Congregation, after due deliberation, and after hearing the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, decided to reply: "It is to be requested of the Most Holy Pope that the Office and Mass of Saint Bede the Venerable be extended to the entire Church, with the addition of the title of Doctor." This resolution, reported by the aforementioned Cardinal to the Most Holy Lord Pope Leo XIII, was ratified and confirmed by His Holiness, and, furthermore, at the suggestion of the Sacred Congregation itself, He deigned to grant that the feast of Saint Bede the Venerable, with the proper Office and Mass of the Confessor and Doctor of the Church, as these have been approved, be celebrated on May 27th, which is his birthday, and if hindered, on the first free day following, by the entire Church, according to the lesser double rite.

[*Latin ed. p. 339*]

FROM THE SACRED RITUALS, 559, from the year 1901 onward. Finally, the Most Holy Lord, our Pope, ordered that the aforementioned Office be inserted, along with the Mass of Saint Bede the Venerable, according to the prescribed rite, in the Universal Calendar and in the new editions of the Roman Breviary and Missal, henceforth. Notwithstanding any contrary things. November 13, 1899. C. CARD. MAZZELLA, S. R. C., Prefect. L. * S. DIOMEDES PANICI, S. R. C., Secretary. MINORCA. Various Doubts. The Reverend John Barber Pons, Beneficiary of the Cathedral Church of Minorca and Master of Sacred Ceremonies, with the consent of his Bishop, humbly proposed the following doubts to the Congregation of Sacred Rites for resolution, namely:

Question I. Can the votive Office of Saint James the Greater Apostle, which, according to the Indult of the Most Holy Pope Clement IX, was recited on the second days of the week, not impeded, in the dioceses of

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Spain, and which can now be fulfilled in place of the votive Office of the Holy Apostles assigned for the third day, according to the decree of the City and the World of July 5, 1883, be transferred to the third day, in those dioceses of Spain, where the votive Offices for each day of the week have not been adopted by the Communities?

Question II. In dioceses where the votive Offices for each day of the week were granted by the decree of July 5, 1883, but have not yet been adopted, can they be chosen once and for all, permanently?

Question III. For the commemoration of Saint Anthony, Abbot, the Patron of this diocese of Minorca, for whom an own Office was granted by the Most Holy Lord, our Pope Leo XIII, may the proper antiphon of the Second Vespers of the feast be said in the suffrage of the Saints: "Today, Blessed Anthony, beholding the Holy Angels with a joyful countenance, as if seeing friends, has passed over into heaven..." omitting "Today"?

Question IV. Are all those approaching and receding from the middle of the choir obliged to bend the knee once, except for the Canons, when the Most Holy Sacrament is not reserved in the main altar?

[*Latin ed. p. 340*]

540 FROM THE SACRED CONGREGATION OF RITES: Question V. After the solemn Mass, in which the Blessed Sacrament is exposed, and while the celebrant and ministers depart from the altar to the *scamnum* on the Epistle side, so that there the celebrant may remove the chasuble and maniple, and put on the cope, and the ministers lay down their maniple, must they kneel before the exposed Blessed Sacrament on the very altar where the Mass was celebrated, on both knees, or on one knee at the lowest step of the altar? Question VI. Is the custom of using a cincture in the manner of a sash permissible? Question VII. Is the custom of using a blue lining under the white veil in the fringes and cuffs permissible? Question VIII. While the words "Souls of the faithful" are being said at the end of the Office, is the sign of the Cross to be made with the hand, as if giving a blessing? Question IX. Is the thurification of the Blessed Sacrament to be performed with a double swing in a triple manner, even during a solemn Mass, before the Introit and at the Offertory? Question X. During the singing of the Mass on the Vigil of Pentecost, must the Paschal candle burn? Question XI. Are those who are kneeling before the exposed Blessed Sacrament, according to the decree 937-1627, dated August 19, 1651, at 6, even those participating in processions, obliged to always kneel on both knees, wearing the alb and cope? And the Sacred Congregation, after considering the report of the undersigned Secretary, and the earnest opinion of the Liturgical Commission, and after careful deliberation, decided to respond as follows: To I. The Indult granted by Pope Clement IX is to be observed. To II. Affirmative, according to the aforementioned General Decree. To III. For the sake of expediency. To IV. Affirmative. To V. According to the

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practice of the Churches of the City, both knees are to be genuflected. To VI. The aforementioned custom can be tolerated where it prevails, until the cinctures currently in use are consumed. To VII. Affirmative, and the decree number 3780, dated July 12, 1892, at 5, is to be observed. To VIII. Negative. To IX. Affirmative, according to the decree 3110-5318, dated March 22, 1862, at 20. To X. Negative, and the special rubric of the Missal is to be observed.

[*Latin ed. p. 341*]

FROM THE SACRED CONGREGATION OF RITES, 341, Ad XI. Affirmative, if it concerns those who are admitted and those who depart, according to the aforementioned decree. And thus it was written. On November 24, 1899. C. CARD. MAZZELLA, Prefect of the Sacred Congregation. L. © S. DIOMEDES PANICI, Secretary of the Sacred Congregation. ADDITION to VI, a reading to be inserted in the Roman Breviary, concerning the dedication of the Archbasilica of the Most Holy Savior. What Pope Pius IX had considered necessary to complete, Pope Leo XIII, with great effort, caused the largest chapel, which was decaying from age, to be renovated and restored. The old mosaic, which had already been restored in many parts, was ordered to be restored to its ancient form and transferred to the new apse, which was magnificently adorned with work and decoration. The transverse hall was also ordered to be renovated and polished, in the year one thousand eight hundred and eighty-four, with the addition of the Sacrarium, the chapel of the canons, and a permanent portico leading to the Constantinian Baptistery. It agrees with the original approved text. In witness whereof, etc. From the Secretariat of the Sacred Congregation of Rites, on November 17, 1899. L. & S. DIOMEDES PANICI, Secretary of the Sacred Congregation. NUCERINA PAGANORUM. Concerning the beatification and canonization of the venerable Servant of God, Father Caesar Sportelli, a priest of the Congregation of the Most Holy Redeemer. To the holy and apostolic man, Alphonse Mariae de Ligorio, whom, along with his religious family, God the Most High raised up in due time for the defense and growth of the Church, Divine Providence joined the Servant of God, Father Caesar Sportelli, as a principal helper and, as it were, a co-author of the Congregation of the Most Holy Redeemer. He, on June 19, in the year 1701, was born in Mola, in the region of Bari (Apulia), from pious and honorable parents, Bernardino and Barbara, of Pavia, and from his childhood, he showed himself to be gentle and inclined to sacred things.

[*Latin ed. p. 342*]

342 FROM THE SACRED RECORDS concerning his character. Having reached the sixteenth year of his age, in Naples, he devoted himself to studies both humane and severe, receiving praise and rewards on several occasions in Lodi. The distinguished priest Falcoia, from the Pious Works, and later Bishop of Stabiensis, served as his advisor, to whose guidance he

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entirely submitted himself in spiritual matters. Having completed a vast course of study in both civil and canon law, he was enrolled among the Doctors and Advocates of the Neapolitan Court; and he gladly undertook the cases of the poor, defending their interests at his own expense. Desiring to promote the education of girls, with the help of his mother, he brought the Institute of the Pious Ladies from Rome to Naples. Even as a layman, he frequently visited the public hospital, almost like an angel of consolation, and, showing his piety, he spent many hours in the church, before the Most Holy Sacrament or before the image of the Virgin Mary. Emulating better virtues, he decided to follow in the footsteps of the Blessed Alphonsus de Liguori, who, having abandoned the legal profession and joined the clerical state, had already laid the foundations of the first Congregation of the Most Holy Redeemer. He gladly joined this congregation at the age of thirty-two, and remained steadfast in its faith, diligently fulfilling the particular purpose assigned to him by the founder, namely, to serve the new congregation with all his strength in sacred missions. Ordained a priest by the aforementioned Falcoia, who had already been elevated to the Episcopal See of Stabiensis, he diligently devoted himself to these same sacred missions. Considering these and other things, and under the command of St. Alphonsus himself, he was appointed rector of several houses and of the entire Congregation. Finally, weakened by infirmities and labors, foreseeing his imminent death, he received the last sacraments of the Church, and, with his eyes raised to heaven, he surrendered his most pious soul to God on April 19, 1750, on the feast of St. Joseph, Spouse of the Blessed Virgin Mary. The fame of his sanctity, celebrated in life and after death, has grown more and more, confirmed by numerous testimonies, both judicial, through the Ordinary Process of Nuceria Paganorum, and extrajudicial, through letters of recommendation from several Roman archbishops and bishops, the clergy and people of Nuceria, and from the Very Reverend Father Matthias Raus, Rector of the Major Institute of the Most Holy Redeemer, concerning the proper introduction of the cause of beatification and canonization of this Servant of God. All of these things, presented to the Sacred Congregation of Rites by the Very Reverend Father Claudio Benedetti, General Postulator of the same Institute, were received by His Eminence and Most Reverend Cardinal Hieronymus.

[*Latin ed. p. 343*]

From the Sacred Congregation for the Rites, number 343, the Reverend Father Gotti, promoter of this cause, at the Ordinary meetings held at the Vatican on the aforementioned date, proposed the following question for discussion: "Whether the Commission for the Introduction of the Cause should be signed in this case, and to what effect?" Furthermore, the Most Reverend and Illustrious Fathers, Prefects of the Sacred Congregation for the Rites, after mature deliberation, and having heard the voice and written

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opinion of the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, judged it fitting to respond: "Affirmatively, that is, the Commission should be signed, if it pleases the Most Holy [Father]." On November 28, 1899. Subsequently, a report on these matters was made to His Holiness, our Lord Pope Leo XIII, by the undersigned Cardinal, Prefect of the Sacred Congregation for the Rites, and His Holiness, approving the Decree of the Sacred Congregation itself, deigned to sign the Commission for the Introduction of the Cause of the Venerable Servant of God, Caesar Sportelli, a professed priest of the Congregation of the Most Holy Redeemer, on the fourth day of December of the same year.

C. CARD. MAZZELLA, Prefect of the Sacred Roman Consistory.

L. & S. DIOMEDES PANICI, Secretary of the Sacred Roman Consistory.

Regarding the beatification and canonization of the Venerable Servant of God, Anthony Mary Claret, Archbishop of Vich, and founder of the Congregation of the Missionary Sons of the Immaculate Heart of the Blessed Virgin Mary, among the Spanish ecclesiastical dignitaries who attended the Ecumenical Council of Vatican, the Servant of God Anthony Mary Claret, Archbishop of Vich, and founder of the Congregation of the Missionary Sons of the Immaculate Heart of the Blessed Virgin Mary, stands out for his work, his eloquence, and his reputation for holiness. He was born in the town of Sallentj, in the diocese of Vich, on December 23, 1807, of parents endowed with virtue rather than wealth, and was baptized in the parish church. Having received the best education, and already strengthened by the sacrament of Confirmation, he first approached the sacred altar after a decade. Devoted to the study of the catechism and pious readings, he also instructed children in these matters, and zealously fostered in them the devotion that he himself held for the Most Holy Sacrament of the Eucharist and for the Divine Virgin. Called to the sacred ministry, and having barely learned the rudiments of the Latin language,

[*Latin ed. p. 344*]

544 From the Sacred Congregation of Rites in the year 1825, he lost his prefect through death. Hence, sent by his father to Barcelona, he learned the art of weaving with special industry and skill. Living according to his father's example, he also consulted about his own vocation, practicing his art and dedicating himself to studies. Meanwhile, he faced the dangers of life, and, with the help of the Most Blessed Virgin, he was preserved unharmed, which opened the way for him to enter a state of greater perfection. With his father's consent, at the age of twenty-two, he left Barcelona and went to Vich, where he was enrolled among the students of the Seminary and devoted ten years to sacred studies and disciplines. He ascended three different grades in the order, and on June 13th of the year 1835, he was ordained to the priesthood, and on the feast of St. Aloysius Gonzaga, he offered the Holy Sacrifice for the first time with the utmost devotion. He

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admirably fulfilled the duties of priest and parish administrator in his native town of Sallent, and he undertook sacred missions to the province of Catalonia and the Canary Islands, always zealous for the salvation of souls. In the year 1849, he founded the Congregation of the Missionary Sons of the Immaculate Heart of the B.V.M., a religious and civil society of great merit; which was subsequently approved by the Apostolic See and spread throughout Spain and other nations. However, shortly after, the Servant of God, obeying the will of the Roman Pontiff, on October 6th of the year 1850, was consecrated as the Archbishop of St. James of Cuba. With the help of thirteen priests and twelve Sisters of St. Vincent de Paul whom he brought with him, he began to cultivate that island. When he was considering how to announce his pastoral administration, he was chosen by the Queen to hear confessions, and he returned to Spain, but nevertheless, by order of the Supreme Pontiff, he continued to govern the Cuban Church, until July 13th of the year 1860, when, in place of another Cuban Archbishop, the Servant of God, Archbishop Anthony, titular of Trajanopolis, resigned. He fulfilled the duties entrusted to him so well that the royal court and the city of Madrid themselves experienced his benefits. The Servant of God repeatedly demonstrated his devotion to the Church and the Apostolic See, especially during the sessions of the Ecumenical Council of Vatican. Finally, having gone to Rome, to the Fontane Frigge, he was seized there, after two months, by a tremor of the nerves; and, as the illness worsened, he was comforted with the Most Holy Eucharist by the hand of the Superior General of his Congregation, Father Joseph Xifré, and he fell asleep in the Lord on October 24th of the year 1870. Meanwhile, it appeared from the ordinary process records that there was a gathering of the clergy and the people for the funeral and burial of the Servant of God, who was in the Vicensi temple of his Congregation.

[*Latin ed. p. 345*]

FROM the Sacred Congregation of Rites, 345. The cause rests, then, upon the reputation of sanctity, virtues, and miracles, both during life and after death, which grows more and more each day. At the request of Reverend Father Jerome Batlló, General Procurator of the aforementioned Congregation of Missionaries and Postulator of this cause, and after considering the petitions of several Eminences of the Holy Roman Church, Cardinals, and of many Reverend Sacred Prelates, as well as Chapters, Orders, Congregations, and Pious Communities of both sexes, together with private persons of ecclesiastical or civil distinction, Eminence and Reverend Lord Cardinal Miecislaus Ledochówski, Relator in Ordinary of the Sacred Congregation of Rites, at a meeting held on the aforementioned day in the Vatican, proposed the following question for discussion: "Whether a Commission for the Introduction of the Cause should be appointed in this case and for the purpose in question?" And the Sacred Congregation itself, after mature

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deliberation on all matters, and after hearing the opinions of Reverend Father John Baptist Lugari, Promoter of the Holy Office, decided to respond: "Affirmatively, that is, the Commission should be appointed, if it pleases the Most Holy [Pope]." On November 28, 1899. In view of all of this, the Most Holy Lord Pope Leo XIII, having been informed by the undersigned Cardinal Prefect of the Sacred Congregation of Rites, and His Holiness, having approved the judgment of the Sacred Congregation itself, deigned to sign the Commission for the Introduction of the Cause of the aforementioned Venerable Servant of God, Anthony Mary Claret, Archbishop of Trajanopolis, on the fourth day of December of the same year.

C. CARD. MAZZELLA, S. B. C. Prefect.

L. * S. DIOMEDES PANICI, S. B. C. Secretary.

[*Latin ed. p. 346*]

346 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. CONCERNING THE NULLITY OF MARRIAGE. Dated April 2nd, August 20th, 1898, and January 28th, 1899. Session 24, chapter 1, Concerning reforms in marriage. Ioachina Maria, Marchioness de Lonze de Lisbor, a widow from Laska, having resided in Paris for many years, had moved her domicile to London, where she lived with her daughters. Among these daughters was Henrica, the youngest, who, for the purpose of completing her education, returned to Paris in the year 1887, and, after spending a few days with her aunt Sophia Fries, entered the house of the Sisters of the Assumption, located in the parish commonly called d'Auteuil, in order to be enrolled among the students. Meanwhile, Henrica, on festive days, as was her custom, with the permission of the Superior, visited her aunt's house, and sometimes even spent the night there. During the Easter holidays, while the young woman was with her aunt, visiting Princess Mathilde, she met a certain German, Bapst, who was immediately captivated by Henrica's beauty and conceived the idea of marrying her. Henrica consented to this marriage, as did her mother, who, residing in London, where she had her domicile, arrived in Paris on May 28th, in the year 1888. In the meantime, Henrica, at the beginning of June, bid farewell to the monastery, and SUMMARY OF THE CASE. The matter is this: We shall be excused if we exceed the limits of ordinary marital cases in recounting this event. It is not recorded that a similar case has been examined by the Holy Congregation, or by the Roman Rota, or by the Holy Congregation of the Holy Office. Now, the question to be resolved is this: Is a marriage validly contracted between persons who, having their domicile in a place where the law of Trent concerning the form of marriage has not yet been promulgated, enter into marriage without the presence of their own parish priest, in a place where that law is in force? This matter has been long debated by the Holy Congregation; however, it was dismissed with a rescript, requiring the opinion of two consultants.

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Indeed, two renowned canonists wrote, but they differed in their opinions.

[*Latin ed. p. 347*]

PARIS. 347 He lived with his mother in a certain house, within the boundaries of the parish of St. Peter of Chaillot, which his mother had rented for only six weeks on the occasion of her marriage. After a month, on July 7, 1888, the marriage was celebrated in the aforementioned church of St. Peter of Chaillot, and it appears that neither the man nor the woman obtained, nor requested, any delegation from their respective parish priests or ordinaries. After the marriage was consummated, the couple set out on their journey, and afterwards they lived together at an address on the "Faubourg St. Honoré," where the man had his residence; the mother, however, returned to London. But contrary to all expectations, this marriage did not have a happy outcome; for, after seven years of cohabitation, disagreements arose between the spouses, and the woman not only abandoned her husband, never returning to him, but was also easily able to obtain a civil divorce. Subsequently, entering into another marriage, and having learned of the nullity of her previous marriage, due to the impediment of clandestine marriage, she appealed to the Court of Paris, demanding that the marriage be declared null, due to the lack of the Tridentine form. The Court of Paris conducted the proceedings, and in July of the previous year, declared the marriage null due to the lack of the Tridentine form. Against this judgment, the Defender of the Bond of Paris appealed. A Synopsis of the Arguments. DEFENSE OF THE WOMAN. He who undertook the defense of the woman's rights, included the entire argument in this reasoning: In Gallus, marriages in which a priest is present are not valid, unless the priest is either the proper parish priest or the proper ordinary, and has not obtained permission from the proper parish priest or proper ordinary, unless it is a marriage of vagrants. However, in the marriage contracted by the woman, a priest was present who was neither the proper parish priest nor the proper ordinary, nor had he obtained or requested permission or a delegation from the proper parish priest or proper ordinary of the spouses, nor...

[*Latin ed. p. 348*]

348. From the Holy General Council, those entering into marriage can be considered as wandering. Therefore, the marriage celebrated on July 7, 1888, between Henrietta de-Laska and German Bapst in the church of Saint Peter in Chaillot, in the presence of the priest Marbeau, must be declared null and void. Thus, the speaker divides his argument into two parts, the first pertaining to law, the second to fact. And proceeding with the question of law, the speaker first notes that, without a doubt, the decree *Tametsi publicatum* was promulgated in Gallus Tridentinum; and therefore, marriages contracted in this region are invalid "unless in the presence of the

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parish priest or another priest with the permission of the parish priest or Ordinary, and with two or three witnesses." It is also well known that the parish priest or Ordinary must be proper, and that the proper parish priest or Ordinary is he who is and is called the parish priest in whose parish or in either, or in one of the parishes, either of the spouses has a domicile or quasi-domicile. With this established, the speaker recalls the doctrine of domicile or quasi-domicile, which is required by law for a valid marriage to be contracted. And with regard to quasi-domicile, of which alone we are speaking in our case, the advocate notes that two things are necessary to acquire it: the fact of residing there and the intention of remaining there for the greater part of the year; with these conditions fulfilled, a quasi-domicile is acquired from the first instance of residing there. But a residence in a parish with the intention of remaining there for a shorter time is a simple residence, and not a quasi-domicile, of which the canons speak. However, because some authors believe that it suffices for a quasi-domicile to have the intention of remaining in a parish for several months, and not to require the intention of remaining for the greater part of the year; indeed, because some have considered a residence in a place for a month to constitute a canonical quasi-domicile, the speaker rejects these opinions with the authority of the Holy Congregation of the Holy Office. For in a letter, which Cardinal Pacelli, in his name, gave to the bishops of Angliae and the United States of America, the following is read: "To constitute a true quasi-domicile, these two things must be present together..."

[*Latin ed. p. 349*]

PARIS. 349. It is required that there be a dwelling, namely, a residence in the place where the marriage is contracted, and an intention of remaining there for the greater part of the year. Therefore, if it is legitimately established that "either both or one of the parties intends to remain in that place for the greater part of the year, from the very first day on which these two things concur, namely, such an intention and actual residence, it must be judged that a quasi-domicile has been acquired, and the marriage contracted accordingly is valid..." Furthermore, it is also evident that actual residence is not sufficient to establish a quasi-domicile if someone resides in that region as a vagrant or itinerant person, and not truly and properly as a resident, as is the custom of others who have a true and proper domicile in the same place. This doctrine is confirmed by the advocate with decisions of the Sacred Congregation of the Council. For the Sacred Congregation of the Council has declared on several occasions that a quasi-domicile is not acquired by residing in a place for the purpose of farming or for farming business, and therefore a marriage cannot be contracted before the parish priest of that place. Indeed, as Sánchez observes, in *De matrimonio*, book III, dispute XXV, number 12, and in *De Angelis* in book IV of the Decretals, book III, number 4, he who enters a place for the purpose of farming

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or for farming business is not presumed to have (unless otherwise demonstrated) the intention of remaining there for the greater part of the year, nor even for half the year, but only for three or four months, even if he remains there for a month, because the presumption that arises from the purpose of the residence is stronger than the presumption that is inferred from the length of the residence. These declarations of the Sacred Congregation of the Council are cited by Benedict XIV in *Inst. Eecles.* XXXIII, number 7. The advocate considered these principles to be important, so that he might easily reach this conclusion, and he argued that the Plaintiff should be considered a foreigner; indeed, although she resided in Paris, in the parish of Saint Peter of Chaillot, for a period of one month, nevertheless, since she did not have the intention of remaining there for the greater part of the year, as will be shown below, she did not acquire any domicile or quasi-domicile.

[*Latin ed. p. 350*]

350 FROM THE HOLY GENERAL COUNCIL. Having stated these premises, the advocate, addressing the specific question, asks whether foreigners, who come from a place where the *Tametsi* decree is not in force, and enter into marriage in a place where it is in force, are subject to the decree, even if they have not previously acquired a domicile or quasi-domicile in the place where the decree is in force. And he notes, first of all, that it must not be overlooked that the most certain canonical principle is that marriage is valid, even if only one party is free from the *forma Tridentina*, since this freedom is also extended to the other party, as Tradition teaches, as stated by Benedict XIV, *De Synodo*, Book IV, n. 12, and as all canonists unanimously repeat. Indeed, the advocate continues, although very serious questions may arise and are raised concerning whether or not persons are bound by the Tridentine decree in places where the decree has been promulgated, the general principle is accepted by all that in these places, all are subject to the *forma Tridentina*, whether they are foreigners or vagrants. And beginning with vagrants, the advocate notes that vagrants are, in the legal sense, those who have no domicile or quasi-domicile anywhere. And all doctors agree that if vagrants are found in a place where the *Tametsi* decree has been promulgated, these vagrants are bound to contract marriage according to the Tridentine *forma*, even if any parish priest or Ordinary is properly responsible, since there is no reason for preference. Again, speaking of vagrants who have only a simple residence in one parish, it is more probable, according to the authors, that only here can they be joined in marriage; so that these vagrants are not only subject to the Tridentine *forma*, but one of their parish priests or Ordinaries is properly responsible. (Gasparri, *Tractatus de matrimonio*, n. 917). As for foreigners, all doctors agree that the Tridentine *forma* applies to those who come from a place where the *Tametsi* decree has been promulgated, to another place where it

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has also been promulgated, and similarly to those who, leaving a place where no substantial form of marriage is established, acquire a domicile or quasi-domicile in a place where that form is established, before contracting marriage. But the question between do-

[*Latin ed. p. 351*]

The Parisian [speaker] argues concerning foreigners who, while residing or having a quasi-domicile in a place not subject to the laws of Trent, immigrate to a place subject to those laws, and there enter into marriage, without previously acquiring a domicile or quasi-domicile. The speaker endeavors with all his might to demonstrate, with the authority of learned doctors, that foreigners in such a case are subject to the laws of Trent. Thus, the opposing opinion, which is defended by the author Carriere (Praelectiones Theol., p. 111, cap. III, sec. II), must be rejected as improbable. Indeed, the speaker argues that Carriere himself, *loco citato*, openly admits that the opinion contrary to his own is the common one. It suffices to cite one or two among the most prominent authors. St. Alphonsus, lib. VI, n. 1080; Pirhing, lib. VI Decret., tit. III, n. 10; Sánchez, De matrimonio, lib. III, disp. XVIII, n. 25. In the same sense speak Pontius, De matrimonio, lib. V, cap. VIII, n. 1; the theologians of Salamanca, De matrimonio, cap. VIII, n. 18; Reiffenstuel, lib. IV Decret., tit. III, n. 130, who states that this doctrine is certain and free from controversy; D'Annibale, Summula Theologiae Moralis, tom. III, § 457, note 41; Mansella, De dispensationis usu in matrimoniis. Furthermore, the speaker confirms this opinion with the authority of the Sacred Congregation [Sacred Office], in an instruction of December 14, 1859. Therefore, according to the speaker, the truly singular opinion of Carriere must be entirely rejected; and, as a certain legal axiom, as the aforementioned authors contend, "the law of the place governs the act," must also be applied to the matrimonial contract, and therefore foreigners in our case are subject to the laws of Trent. If a marriage is entered into in a country where the decree of Tamets is not promulgated, the laws of Trent would not be necessary for validity; but if a marriage is entered into in a place where the decree of Tamets is promulgated and in force, that decree binds them, and therefore requires, for validity, the presence of their own parish priest or Ordinary, or another priest with the license of the parish priest or Ordinary, along with two witnesses. According to the speaker, the very purpose that the Fathers of Trent had in mind was...

[*Latin ed. p. 352*]

552 From the decrees of the Council of Trent, the celebrated decree "Tametsi" confirms this. For, according to what is narrated by Cardinal Pallavicini in his *Historia Concilii Tridentini*, book XXII, paragraphs 42-46 and numbers 104-105, it prevailed among the Fathers of Trent that the parish priest was a necessary witness to the validity of marriage, because

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he, above all others, could know of any impediments that might exist between the betrothed. Therefore, whenever the parish priest is present, who is the proper one, and the law requires his presence, the marriage must be celebrated before him, or at least by his delegation. With these premises established, the advocate, descending to the question of fact, seeks to prove that a priest who was not the parish priest or the proper ordinary was present at the marriage contracted by the actress, nor had he obtained or requested a delegation from the proper parish priest or from the proper ordinary of either of the spouses; and that the spouses were not vagrants. And indeed, it is easily proven that the man, when the marriage was contracted, had no domicile in the parish of Saint Peter of Chaillot, from the testimony of the man himself, Germain Bapst, who, although in his deposition he opposes the nullity of the marriage with all his might, nevertheless, when questioned about his domicile, absolutely stated: "I lived at number 213, rue du Faubourg Saint Honoré, and I had lived there for about two and a half years. I had a real domicile there; my parish was Saint Philippe du Roule." As for the woman, the advocate contends that it is proven with no less certainty that she had a domicile elsewhere at the time the marriage took place, and that she frequently visited Paris, within the territory of the aforementioned parish of Saint Peter of Chaillot. And indeed, the actress immediately left England, and in September or October of the year 1887, she requested to go to France, for the purpose of education, and shortly before entering the monastery, she stayed with her aunt, Sophia Fries, on the street commonly called avenue Marceau, which street is located within the boundaries of the parish of Saint Peter of Chaillot. But no one can certainly say, the advocate adds, that the actress obtained, by this stay, a domicile in this parish.

[*Latin ed. p. 353*]

PARIS. 553. If the termination of residence excludes the possibility of establishing a domicile for a significant portion of the year, but if the defender of the bond were to contend that the Actress acquired a quasi-domicile in the parish of Saint Peter of Chaillot during this initial residence, the advocate would readily concede this point. For, shortly thereafter, namely on November 17, 1887, the Actress left her aunt's home and entered the monastery of the Assumption in the parish of Saint Mary of Auteuil, thereby obtaining a quasi-domicile there, and thus losing any domicile, if she had possessed one, in the parish of Saint Peter of Chaillot. This is attested to by the Superior of the Monastery of the Assumption: "Miss Quetta de Laska entered as a free boarder at the Convent of the Assumption on November 17, 1887; she left in the month of June 1888. Madame de Laska then resided in England." Indeed, at times, the Actress, leaving the monastery during her vacations, returned to her aunt's home, and sometimes even slept there, but from this, no one can seriously deduce

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that a quasi-domicile continued or was established. For these absences from the monastery were never excessively prolonged, and moreover, it appears that Henrietta was sometimes staying with her aunt, Madame Fries, and sometimes with her grandmother, Madame Marie de Lonze Lisbor, who resided in Paris, as the Superior herself testifies under oath. Furthermore, when the Actress's mother came to France for the purpose of marriage, Henrietta immediately left the monastery and, together with her mother, took up residence in a public inn called the Hôtel Meyerbeer, on rue Montaigne, in the parish of Saint Philip of the Wheel, with the intention of not returning, neither to the monastery nor to her aunt's home. Therefore, the advocate argues, if Henrietta, until the month of June 1888, when she was staying with her mother at the aforementioned Hôtel Meyerbeer, did not have a domicile or a quasi-domicile in the parish of Saint Peter of Chaillot, she certainly did not acquire one thereafter. Moreover, the house located on Via Christoph Colomb, number 16, which is situated within the boundaries of the parish of Saint Peter of Chaillot, and where the marriage was celebrated...

[*Latin ed. p. 354*]

354 FROM the Decrees of the Council, it was stated that the actress's mother had resided there for only six weeks, and solely for the purpose of performing the marriage ceremonies, which are entirely incompatible with the notion of a quasi-domicile. Furthermore, the defender argued that no delegation had been granted by the parish priest or ordinary of either of the spouses in this case. From the above, according to the defender, it also follows that no delegation was granted by the parish priest of London, the actress's own parish priest, because no one considered such a thing. And yet, this was precisely the time when the marriage took place, and the actress could not, in any way, be considered a resident of that place. Indeed, it is known that others, even when of a young age, are found to reside in the home of their parents. In fact, in the year 1888, when the marriage was celebrated, the actress was a minor, as evidenced by the marriage certificate extracted from the records of the Parish of Saint Peter of Chaillot, and the mother of the actress, Mariae de Laska, resided in London. Therefore, the lawyer concludes, since in Gaul, marriages are not to be considered valid unless they are performed in the presence of the parish priest who is either the proper parish priest or one delegated by the proper parish priest or ordinary of either of the spouses, unless it is a matter of a marriage of vagrants; and since 2° the spouses in this case were not vagrants, and the marriage was contracted before a parish priest who was not the proper parish priest, and who had no delegation from the proper parish priest or ordinary of either of the spouses, it must be concluded that this marriage was invalid due to the lack of proper canonical form.

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OBSERVATIONS OF THE DEFENDER *IN DEFENSE OF THE MARRIAGE*.

On the contrary, the defender of the marriage, *ex officio*, concedes that no delegation was granted to the parish priest of Saint Peter of Chaillot to join the actress, Henrica, and German in marriage; he also admits that the actress was not considered to have a quasi-domicile in the aforementioned parish of Saint Peter: but he argues that this marriage was clandestine, or contracted contrary to the form of Trent. Therefore, he presents for examination the well-known decree *Tametsi* of the Council of Trent, chapter 1, concerning marriage, session 24.

[*Latin ed. p. 355*]

PARISIAN. 355 From this, the speaker infers that the object of the recited law is twofold. Firstly, the legislator, namely the holy synod, renders (the betrothed) entirely incapable of entering into such a marriage; secondly, it declares such a contract to be void and null. Therefore, this Tridentine law is personal and local, which is the same as saying it is both incapacitating and invalidating. Thus, the advocate for the sacrament argues, if we wish to determine whether the decree *Tametsi* was sufficient in the celebration of the present marriage, we must inquire what either of the spouses, namely Henrietta, was required to perform in this regard. This can be easily ascertained if we examine whether Henrietta was restricted by only the first part of the aforementioned decree, or only the second, or by both. It is possible that someone may be bound only by the first part, or only by the second, or by both; and not all are bound in the same way, but some by a double, and others by a simple, so to speak, bond. Indeed, the pastor of the parish is not necessarily obligated if he is subject only to the second part of the decree *Tametsi*. Therefore, the speaker observes, the first part of the law, namely the incapacitating part, does not affect all who are in the parish where the law is promulgated and in force, but only those who reside there with the intention of remaining there permanently, or for a considerable time, so that they may be considered subjects of that pastor. The reason is because the incapacitating law pertains to the person. Therefore, as the aforementioned author states, the law adheres to the subjects, not to the place, *Benedictus XIV de synod, dioeces, lib. 13, cap. 1*. Consequently, it follows that foreigners are not bound by a personal law in force not in their domicile, but in the place of their transit; and conversely, that foreigners are bound by the personal laws of their country, unless they have departed from their homeland without the intention of returning, even if they divert to places where those laws are not in force. This is also observed in other personal laws, including the Tridentine law, *Benedictus XIV instruct. 33, n. 9*. Therefore, the defender argues, since it is the nature of an incapacitating

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or personal law, it is clear that Henrietta, in the present case, is...

[*Latin ed. p. 356*]

556. From the perspective of the Most Holy Council, the following words of the Tridentine law do not apply to these individuals: "The Holy Synod declares those entirely incapable of contracting marriage in this manner [without a parish priest and witnesses]." Indeed, Henrietta is not at all affected by the Tridentine law due to her residence in London; for that chapter does not have force there. However, if she had any quasi-domiciles in Paris, outside the parish of Saint Peter of Chaillot, she would have completely lost them at the time the marriage was begun. With these premises established, the advocate proceeds to the other part of the law, which states: "It declares such contracts to be void and null, as it makes them void and annuls them by the present decree." And he observes that this part of the decree is entirely different from the first. For the first part concerns the individuals, the spouses, the authors of the marriage contract: "The Holy Synod declares those entirely incapable of contracting marriage in this manner"; while the second part concerns the marriage contracts themselves, which it declares void and annuls, not the authors of the marriage contract, the spouses. Therefore, the question of whether the spouses have a domicile or quasi-domicile different from their own is entirely separate from this part of the law; it is sufficient that the marriage contract, which is perfected at a given moment, was entered into in the parish in which the chapter, Tametsi, has force. Therefore, it is clear that Henrietta, even though residing in London, is included in this part of the decree; and it is also clear that Henrietta has satisfied the requirements, since she celebrated the marriage before the vice-parish priest Emmanuel Marbeau, delegated by the parish priest, and before witnesses. If, on the contrary, the opponent were to say that the marriage was clandestine, because the parish priest of Saint Peter of Chaillot, from whose permission the priest Emmanuel Marbeau obtained consent for the mother to enter the monastery, was not Henrietta's own parish priest, the defender of the bond would reply that Henrietta was not bound by any necessity to have her own parish priest. For the term "own" indicates a relationship not to the act, but to the person. But whatever pertains to the person, pertains to the first part, and not to the second part of the Tametsi decree. Furthermore, in the sense of chapter Tametsi, the proposition: "Caius is the own parishioner of Titus," means the same thing.

[*Latin ed. p. 357*]

PARISIAN. 357 and the proposition: Titius has his domicile, or quasi-domicile, in the parish governed by the parish priest Caius. This is the fact, and it is supported by the argument presented by the advocate, who contends that the parish priest of Saint Peter of Chaillot was not the proper pastor of Henrica; which is equivalent to saying that Henrica, by that delay,

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was not truly subject to the parish of Saint Peter. Indeed, this fact of domicile or quasi-domicile of those about to marry in the parish where the marriage is celebrated is the first part of the law of Trent, as stated above; not the second, which governs the act, not the author of the act, and requires nothing other than that the act, the marriage contract, be celebrated where the law is in force. Then, the defender asks, how can this necessity of a proper pastor arise, which would obligate Henrica? Not from her domicile in London; for it would be unheard of for the law to exert its force in a place where it does not prevail; and it would be more in effect than in cause. Indeed, it would contradict the will of the fathers of Trent, clearly manifested at the end of the decree. Furthermore, the advocate continues, this law, which the Holy Synod expressly forbids from having force in parishes where it has not been promulgated, would not even have that force there, but rather another, more effective force, by virtue of which the faithful would be more strictly bound to have a domicile or quasi-domicile in parishes exempt from the decree of Trent than in the place where the law is in force. However, the fathers of Trent, because they most abhorred restricting the freedom of marriages, provided for those about to marry who could not or would not be assigned to a proper pastor, that a pastor or priest of another diocese should grant permission. Indeed, those subject to the law of Trent freely enjoy the faculty of being married before another priest in the place where the law of Trent is in force; but those in a place exempt from that law would be deprived of this if they were to marry a transient in a place subject to that law. Therefore, the defender of the marriage asks, by what right can the pastors of parishes in which the Council of Trent has not been promulgated grant permission to those about to marry to celebrate the marriage before another priest? Not by the certain force of that law.

[*Latin ed. p. 358*]

358 FROM THE DECREES OF THE COUNCIL. Although, as we have said, this [parish] lacks its proper authority; nor does it have it by canonical law, because the parish priest, by the law of decrees, does not have the mandate to validly assist at marriages, nor can he confer it upon others. Moreover, by canonical law, those who wish to marry approach the parish priest in order to obtain permission, not in order to validly celebrate the marriage. From this it follows that, if a parish priest is asked by a subject to grant a dispensation, he ought to respond to the subject: "The matter is one of conscience, depending on the excusing cause." Therefore, the speaker continues, those unhappy wanderers who reside in parishes exempt from the decree of Trent, and who establish another residence in the place of marriage, and another domicile before marrying, ought necessarily to do so. What is more, although the Holy Synod warns us that these wanderers are of perverse character (I. c. cap. 7), we allow them to wander freely

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and to have uncertain abodes, and we do not even consider obliging them to establish a domicile or quasi-domicile in a specific parish, nor do we suspect, even from afar, that this contradicts the Council of Trent, since we readily admit them to marriage before any parish priest. Furthermore, the speaker argues, that distinction between the first and the second part of the law of Trent, between those who are bound before their own parish priest and those who are bound before a parish priest who is not their own, should not be considered unusual or new. Indeed, he responds, this distinction arose simultaneously with the very law of the Council of Trent. Certainly, the Fathers of Trent, when they defined the form of the marriage contract, did not add the word "own" to the parish priest. For they were content with these words: "In the presence of the parish of the priest or priest from the same parish, or with the permission of the parish priest or ordinary, and two or three witnesses." It is barely understood why those most wise Fathers omitted that epithet "own," which, indeed, has caused great labor to interpreters from the first part of the law, if they intended to compel all, even those who are bound only by the second part of the law, to contract marriage before their own parish priest. In fact, the distinction of Tarifa is not...

[*Latin ed. p. 359*]

PARISIEN. 359, and it has not been proven by any private author, but by the supreme prince of the Church himself. And as we have already stated above, the Sacred Council declared that the inhabitants of the place where it is in force are bound by it, chapter. Although those who pass through or are traveling through the place, exempt from the decree of said chapter, are nevertheless bound, if they contract marriage there, to observe the law of Trent: and such resolutions were approved by Pope Urban VIII on August 14, 1627. Everyone can easily see with their own reason that these aforementioned travelers are bound only by the first part of the law of Trent, and not by both, nor by the second. Indeed, as has been demonstrated above, just as the first part does not bind those who are within the territory, unless they become subjects by domicile or quasi-domicile, so it binds those who, once made subjects, are not bound, unless they abandon their domicile or quasi-domicile and, by doing so, cease to be subjects; although they are outside the territory, chapter 1 of the law of the kingdom: (there) "Every thing, for whatever reasons it arises, is dissolved by the same reasons." The other part of the law, as has also been said above, binds all and only those who are within the territory, whether they are inhabitants, or guests, or travelers. And it is undoubtedly the case, the speaker points out, that those inhabitants of the place who are subject to the Council of Trent must, when celebrating marriage in a place exempt from the Council, use their own proper parish priest. And the case of Parisien, of August 25, 1873, is recalled. Conversely, there were vagrant people both in our time and when

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the Council of Trent was held. From what has been discussed so far, it is clear that these people are bound by the second part of the decree, but not by the first. And if there are people in the world who must be compelled to marry before their own parish priest, in order to protect them from the evils that the fathers of Trent sought to prevent, then, according to the opinion of those fathers themselves, they are undoubtedly vagrants; Trid. chapter 7 on the reform of marriage, session XXIV. Therefore, the defender argues, is it not the case that those who are not vagrants, but are reprobates?

[*Latin ed. p. 360*]

360. From the Sacred Council, it appears that a decree was established concerning those men who, having abandoned their first wife, take another, and often several others, while the first is still living. However, it is certain that their marriages, unless the proper pastor is excused by necessity, are valid before any pastor. Sánchez de matr. lib. 3, disp. 25, n. 11. Why is this so? Because the first part of the decree could not encompass all such cases. In truth, the first part of the decree is restricted to those who have a domicile or quasi-domicile in the parish mentioned in the decree "Tametsi." Therefore, to the one who attempts to persuade the proper pastor to celebrate a marriage, arguing that it is necessary, the advocate responds that the Holy Synod addresses this very problem in the seventh chapter concerning marriages, session XXIV. Sánchez de matr. lib. 2, disp. 25, num. 8. With these considerations in mind, the question arose whether the opinion of the Archdiocesan Court of Paris should be confirmed or rejected in this case. However, after a judicial deliberation, on April 2, 1898, the Fathers responded: "Let the opinion of two consultants be sought."

PROCEEDING OF THE CASE. Opinion of the First Consultant. The Most Reverend De Luca, were he still living, would surely be astonished. For even in his time, he believed that all legal questions concerning the observance of the marriage form introduced by the Council of Trent had been virtually resolved through numerous declarations of the Sacred Congregation, through the decisions of the Roman Rota, and through the common and accepted traditions of canonists and moral theologians. Adnot. ad Sac. Conc. Trid. Disc. 26 n. 2. The matter at hand is of the utmost importance, concerning the validity or nullity of the marriage between the German, Bapst, of Paris, and the Englishwoman, Henrica de Laska, of London, which took place on July 7, 1888, in the parish church of Saint Peter, commonly known as "de..."

[*Latin ed. p. 361*]

PARIS. The matter celebrated at Chaillot, which the Sacred Congregation proposes to discuss today, clearly demonstrates how much the conjecture of the esteemed jurist has erred. For, setting aside the traditions of the Canonists and Moral Theologians, of which we shall speak later, it is certain

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that the Sacred Congregation has never issued any declaration, nor has the Roman Rota rendered any decision, concerning the validity or nullity of a marriage contracted between persons domiciled in a place where the decree of Trent, *Tametsi, Cap. 1, Sess. 24 de ref. matr.*, has not yet been promulgated, the marriage being contracted without the presence or license of the proper pastor in the place where that decree is in force; and in this matter, I have seen the entire sum of arguments presented by both the patron and the defenders of the marriage in the present cause. Indeed, can it be that, over so many years, it has never happened that a resident of a place exempt from the decree of *Tametsi* has entered into marriage in that very place? Or rather, has it never happened that the validity of a marriage so contracted has been called into question? Certainly, this is a matter of such importance that it should warn everyone to proceed with mature examination and prudent judgment in this matter. The Consultor, having noted certain facts, approached the legal question, stating that the question is whether a marriage contracted by residents of a place exempt from the decree of *Tametsi* in that same place, without the presence or license of their proper pastor, is valid. Those who maintain a negative position use three types of arguments: first, they deduce it from the force of a general law of the Church, which they claim to be the decree of Trent; second, from the established principle of law, "Locus regit actum" [The law governs the act]; and third, from the common opinion of the Doctors. Those who defend a positive position, as are the Parisian and Roman advocates, rely primarily on the fact that the Tridentine law is either disabling, or personal, and invalidating, or local; and that the necessity of the proper pastor is required not because the law is local, but because it is personal. To make the clarification of this controversy clearer, certain...

[*Latin ed. p. 362*]

362 I believe that the principles of law established by the Sacred Council must be considered. It is the nature of law to immediately concern the community, and only mediately to affect all and only those who reside within the territory where the law is enacted. Consequently, every law is, by its very nature, territorial or local, and does not affect individuals except through their presence within that territory; hence, the saying: "Outside the territory of the one who enacts the law, obedience is not given without impunity." 20 D. de iurisd. and chapter 2, section 6°; and this is so even if someone, with the intention of avoiding the obligation of the law, leaves the territory; for in this case, he is not acting in violation of the law, but is exercising his own right. However, an exception to this principle has been made by prohibitions introduced by Clement VIII in the Constitution *Superna* on July 21, 1620, and by Urban VIII in the Brief *Exponi Nobis* on August 14, 1627, so that no one may leave the territory in order to evade the laws regarding reservations and clandestine activities, as we shall see later.

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On the other hand, since laws can only be applied to subjects, it follows that those who are not subjects are not bound by the laws of the place where they are present. However, even this principle has a common exception, especially with regard to contracts, the value of which is said to depend on the laws of the place where they are made; hence, the saying: "The law of the place governs the act." This is of great importance in our matter, so that the meaning and force of this exception may be properly determined. As is manifest, the fact that the value of a contract depends on the laws of the place where it is made, and therefore that the law of the place governs the act, is not due to the inherent force of the laws themselves, but solely to an external cause. The foundation of this cause is found in *De iudiciis* 19, which establishes that a person may be summoned, not only in the place of his domicile, but also in the place where the contract was celebrated. This provision is confirmed in our law in Chapter 20 of the Decretals and in Chapter 1, § 3, section 6, regarding the competent forum, where it is expressly stated that a foreigner, by reason of a contract, is subject to the jurisdiction of the forum, provided that he is summoned before he leaves the place where he entered into the contract. Schmalz, n. 45, on the competent forum. Furthermore, since each judge is obligated to resolve all disputes according to the laws and customs of his own region, it follows that there is a need for a prudent interpretation of local laws.

[*Latin ed. p. 363*]

PARISIAN. 363 Concerning the commencement of contracts. Let Pignatelli, Vol. V, Canon 79, no. 32, be heard: "The doctrine that foreigners are not bound by the laws of the place in which they are present, does not apply to contracts, as Sánchez notes in book 3 on marriage, section 18, no. 10; because, since a contract pertains to a foreign forum, it must be governed by the laws according to which that forum proceeds." Therefore, the statement that the law of the place governs the act, derives its sole origin from the interpretation based on the prudent judgment that each competent forum applies to the place where the contract was concluded. Consequently, this statement admits of multiple exceptions in practice. It suffices for me here merely to recall the common and accepted distinction, with which, according to the testimony of Emo De Luca, *De donationibus*, section 21, no. 3, the Rota and the Curia proceed, namely that the laws concerning contracts are either such that they simply and absolutely incapacitate the contracting parties; or that they incapacitate causally and conditionally, namely, under a certain form or solemnity; or finally, that they simply concern the form of the act itself. Now, if we are speaking of the latter, it is universally accepted that those not subject to the law in the place of the contract are not bound by them; therefore, with regard to solemnities that simply concern the form of the act, the principle that the law of the place governs the act is entirely valid. But the same cannot be

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said of other laws, which either simply or conditionally incapacitate the contracting parties; for these laws do not concern the act itself, but the agent directly, and deprive them either absolutely or conditionally of the capacity to contract. And it necessarily and essentially follows that such laws can only bind those persons who are subject to the legislator; for the power of the legislator over the legal capacity of those not subject to him cannot be conceived. Therefore, with regard to these laws that establish the incapacity of persons, even if they are territorial, or local, and contractual, it does not follow that the principle that the law of the place governs the act applies to those who are not subject to it, or are foreigners. Thus, for example, if someone, being of full age and capable in his own country, is outside the territory in a place where he would be a minor and without a certain status.

[*Latin ed. p. 364*]

364 From the solemnity of the General Council, an impediment to marriage is established; however, it has been declared that a marriage contracted without this solemnity is valid, as affirmed by the Rota on December 7, 1646, numbers 3 and 4, which is considered a matter of established doctrine; and also in the Roman Society's decree of May 29, 1623, in the case of Remboldo, and in the decree of the Castrum of Reatina on June 21, 1666, in the same case. Compare also Bartolus, ad I. 1, Code of Summa, title 32; Brunnemann, Commentary on the Code, ad I. 1, de Summa, title 6; De Luca, on alienation, discourse 29, numbers 3 and following. Now, let us turn to the Tridentine law, Chapter 1, Session 24, concerning marriage. It is well known that this law is to be understood and, in fact, is interpreted by all Canonists and Theologians in such a way that, as far as possible, it corrects the ancient law of the Sacred Canons as little as possible. Hear Bossius, De Matrimonii Contractu, chapter 4, section 11, number 20: "A corrective law is to be interpreted strictly, and such is the decree of the Council of Trent in chapter 1, session 24, concerning marriage, which is a corrective of the ancient law; therefore, it is not to be extended, but rather strictly interpreted." Ursaya, Bis. 25, number 26, volume 7, paragraph 2, makes this even clearer: "A corrective law is to be interpreted strictly, and such is the decree of the Council of Trent, which is a corrective of the ancient law. From this, it is inferred, according to well-known principles, that it must be interpreted in such a way that, as far as possible, it corrects said common law; so that it is sufficient in itself that the crime of polygamy is avoided, which was the purpose of the Holy Council of Trent in establishing this new law. If any doubt remains concerning this, it should always be interpreted in favor of the validity of the marriage." Consequently, among other things, the doctrine is accepted that the privilege of communication applies, namely, that if one party, by reason of the place in which he lives, or by reason of the society in which he lives, is exempt from the Tridentine

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law, this exemption is also communicated to the other party; and therefore, neither party is bound by the Tridentine form with regard to the validity of the marriage; and thus, a clandestine marriage is valid, although illicit. In this matter, Benedict XIV, in Syn. VI, VI, number 12, explains that all who appeared before him in the Sacred Congregation.

[*Latin ed. p. 365*]

PARIS. The Pontiff has considered the question of the validity of clandestine marriages among heretics, or those mixed marriages in the United States, Belgium, and Holland. Once the validity of marriages among heretics was admitted, they have, by unanimous votes, also admitted the validity of mixed marriages. However, the matter concerning the Tridentine decree itself arises: whether and in what sense it constitutes a general law of the Church. The very manner, singular and extraordinary, which the Fathers of Trent intended to be observed in the promulgation of this decree, clearly demonstrates that it cannot be treated, with regard to itself, according to the same criteria as are used for other laws. Indeed, it is known that promulgation is the reason for a law, as St. Thomas states in *Summa Theologica*, 2, q. 90, n. 4; therefore, without promulgation, there is no obligation of the law for the subjects; for, as Gratian says in *Decretum*, C. III, Dist. IV, laws are established when they are promulgated. Although the Tridentine decree was enacted for the good of the entire Church, and, so to speak, can be called a general law of the Church, it is not so in fact; for when the Fathers of Trent decreed that the decree should be published in each parish and that it should not have force until thirty days after the publication, and since, in fact, it has not been published in all parishes, it is clear that the decree, in fact, does not apply to all subjects of the Church, and therefore does not constitute, in fact, a general law of the Church. Hence, it is entirely false for some Doctors, with regard to those parishes in which the Tridentine law concerning clandestine marriages has not been published, to invoke the principle of exemption from common law, so that they may deduce that this exemption is local, and not personal. Indeed, since no publication of this decree has been made here, therefore, not only for the parishes, but also personally for the parishioners, this decree has no force. I understand that the principle to which these Doctors refer, when speaking of common law, is that it must be published for all subjects; then, if any exemption is granted for some reason, this exemption is not personal, but rather...

[*Latin ed. p. 366*]

366 The decree of the General Council is a local one; therefore, those absent from their own territory are exempt from this law, since they are subject to the common legislator, for the law published for all applies to all, and they do not enjoy the privilege of their own territory when outside

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of it. But I do not understand this at all when it is a question of a law, such as the decree of Trent, which was not published for all subjects; then, for those for whom the law was not published, the exemption, if it may be so called, must necessarily be not only local, but also personal; because, whether they are within or outside their own territory, it is always true that the law was not published for them; and a law that is not published is no law for subjects. Furthermore, the following words, which the Council of Trent uses, are noteworthy: "Those who attempt to contract marriage in any way other than in the presence of the parish priest, or another priest with the license of the parish priest or ordinary, and with two or three witnesses, the Holy Synod declares to be entirely incapable of contracting such a marriage, and decrees that such contracts are void and null, as it makes them void and annuls them by the present decree." From these words it is clearly evident that we are dealing with a law that does not simply concern the form of the act, but rather, in a disabling sense, according to a certain form or solemnity. This form or solemnity consists in the presence or license of the parish priest and two or three witnesses. Moreover, it can no longer be doubted that the parish priest must be the proper one of either of the contracting parties. Therefore, the entire force of the law of Trent is reduced to this: that if a marriage is attempted in places where the decree of Tametsi has been published and is in force, and the aforementioned form is not observed, then such a marriage is, by the very law, null and void due to the incapacity of the contracting parties. Therefore, the solution to the question must be derived in a fitting manner: who and how are bound by this Tridentine law? And first, the distinction introduced by the Reverend Defender of the Roman Church does not seem to be sound, namely, that there are two different parts to the Tridentine decree: one, in which the Holy Synod declares those who attempt to contract marriage in any way other than the aforementioned form to be entirely incapable of contracting such a marriage; and the other, in which such contracts are declared to be void and null; if...

[*Latin ed. p. 367*]

PARISIAN. It is indeed evident that the latter statement is nothing more than a mere declaration of the immediate and necessary consequence of the former; for the incapacity of the contracting parties, by the very law itself and by its own nature, carries with it the nullity of the contract; since the capacity of the subject is one of the requisites belonging to the essence of the contract. Therefore, when the Holy Synod decreed that marriages contracted otherwise are invalid and null, it did not establish anything new by this, but simply expressly declared what was already contained in the decreed incapacity of the spouses to contract otherwise. Consequently, the theory proposed by the same defender of the sacrament, which states that it is possible for someone to be bound only by the first part, or only by the

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second part, or by both parts of the decree; nor that all are bound in the same way, but that some are bound by a double, and others by a simple bond; this is not in harmony with the Tridentine decree; for there is one law of Trent; one object of that same law, and one single bond, by which all are bound entirely in the same way, to whom that law applies. Nor does the doctrine of either of the defenders of marriage, the Parisian, rest on a firmer foundation; for it is true that the Tridentine law is both personal and local; but it is not true in the sense in which this distinction is understood by him. For it is not the reason of domicile or quasi-domicile, as he believes, that makes the difference between a law that is personal and one that is local; since this reason is common to any law; since the law does not bind except those who are subject to it; and a person becomes subject only by reason of domicile or quasi-domicile. In order that the meaning of this distinction may be properly understood, and thus it may be rightly determined what the Holy Congregation of the Holy Office intended when, on December 14, 1859, it stated that the Tridentine law is both personal and local, it is necessary to recall and apply here what we have previously stated from general principles of law. From the general rule, any law by its very nature applies only to all and to the sole subjects residing within the territory of the one who enacts it. From this, two things follow: 1° That any law, by its very nature, is only for subjects; 2° That any law...

[*Latin ed. p. 368*]

o68 The law of the Council of Trent is, by its very nature, territorial or local. Furthermore, the Tridentine law stipulates that it must be territorial or local in nature, and applies only to subjects. However, as we mentioned above, attention must be paid to the limitation introduced by the decree of Urban VIII of August 14, 1627, which stipulated that the marriage of those who, having departed from the place where the decree of the Council of Trent was received, move to a place where it is not received, is invalid if they do so fraudulently, and secretly contract marriage there. Consequently, contrary to the general principle that obedience is not required outside the territory where the law is in force, the Tridentine law obliges subjects even outside the territory, and therefore, in this respect, it is personal. And in this precise sense, the term "personal" is used in the aforementioned Instruction of the Holy Office, as is evident from the very words of that Instruction: "In so far as it is personal, it affects those who, having a domicile or quasi-domicile in the place where the Tridentine decree has been promulgated and is in force, would wish to contract marriage in another place where it is not in force." In this sense, it is local, as are all other laws; insofar as it affects the territory; and in this respect, it obligates only those who reside there; since any law can only be given for the benefit of subjects. Therefore, from this general principle, those who are not subjects, or foreigners coming from a place where the Tridentine law has not been

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promulgated, to a place where it is in force, cannot be bound by the intrinsic force of the law itself. But neither can they be bound by an extrinsic cause, or by reason of contract; for the Tridentine law is not among those that simply regard the form of an act, and with respect to which the principle applies that the law of the place governs the act; rather, it is among those that incapacitate the contracting parties in a manner other than under a certain form. However, we have already seen that these laws can only bind those persons who are subjects of the legislator. And it cannot be said that the incapacity here does not arise from the judgment of a judge, and is therefore attached to the person; but rather, it arises from the law, and therefore follows the nature of the law; for if anything can apply to subjects residing outside their own territory, it is this.

[*Latin ed. p. 369*]

PARISIEN. 569, namely, since the law of the proper territory does not obligate them there, nor can it obligate them by incapacity; it makes absolutely no difference in the contrary case, namely, of a non-subject residing in a place where a disabling law is in force; since there is no power for the legislator concerning the legal capacity of those not subject to him. Nor is it the case that one should insist on the words of the cited Instruction of the Holy Office: "To the extent that it is local, it affects the territory, and obligates those who are to be joined in marriage there." For the context itself sufficiently shows that the Holy See did not remotely consider the case of non-subject parties in a place where the Tridentine law is in force; rather, its intention was to declare that the aforementioned law not only obligates those subject to it residing in their own territory (local), but also obligates those contracting marriage outside the territory (personal). Furthermore, we have in this matter an open declaration from the Assessor of the Holy Office in a letter to the Roman Secretary of the Holy See, dated May 3, 1898, in which it is asserted that no decision was found in the Archives of the Holy Office concerning the case in question; which demonstrates that the Holy See had a completely different intention when issuing the Instruction of December 14, 1859. From what has been said so far, it is clear that the Tridentine decree "Tametsi" is neither a general law, nor a local law, nor a personal law, and does not affect foreigners coming from a place where the same decree was not promulgated, and therefore the marriage contracted clandestinely by them in a place subject to the same decree is valid. And furthermore, whoever were to maintain the contrary would necessarily have to admit one of the following: either that foreigners coming from a place exempt from the Tridentine law could not validly contract marriage in a place where the same law is in force; or that, in order to validly contract marriage, they would have to acquire domicile or quasi-domicile there; or finally, that the permission of their own parish priest would be required. But the first is unheard of in law, contrary to

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the freedom of spouses, and completely foreign to the letter and spirit of ecclesiastical laws. Cf. Benedict XIV, De Syn. XII, V, n. 5, Acta, Vol. XXXII, p. CCCLXXVIII. 24.

[*Latin ed. p. 370*]

370 FROM S. C. CONCILIAR INSTR., S. OFF., July 6, 1819, etc. Another would be the same as saying that the Council of Trent wished that, in places where the decree *Tametsi* is in force, marriages could be validly contracted even without the presence of the proper pastor; which is so far from the mind of the Holy Synod that no one can fail to see. Finally, a third is not applicable in this case. Indeed, I readily admit that the proper pastor's juridical condition was neither created nor altered by the Council of Trent through the decree *Tametsi*. Moreover, I readily concede that, before the Council of Trent, and even now in places where the decree *Tametsi* has not been promulgated, the faithful are bound by law to publicly contract marriage in the Church with the blessing of their proper pastor, for a licit marriage to be celebrated. But these things have nothing in common with the right that the proper pastor enjoys of assisting as a witness, as they say, to the spouses, for their very validity; for this right belongs uniquely and exclusively to the proper pastor, stemming from the decree *Tametsi* as its efficient cause. Where, therefore, this decree is not in force, neither can such a right belong to the proper pastor. Furthermore, if the pastor himself does not have the right to assist as a witness, it is evident that he cannot grant this permission to others; since "no one can transfer to another more right than he himself possesses," Reg. iur. 79, in 6°. Consequently, it is clear that the distinction made in this matter by the Reverend Canonist Consultant in Rome, on January 11, 1868, between vagrants and peregrines is not sufficiently solid, in order to demonstrate that the example of vagrants is of no benefit to peregrines with regard to the validity of marriage. For although the condition of vagrants and peregrines is entirely different in itself; since the former have no domicile anywhere, while the latter have a fixed domicile; and therefore, although in general what is established by law concerning the former cannot logically apply to the latter; nevertheless, in this matter, which we are discussing, if the matter is examined more closely, it does not seem to be the case; for here we are dealing with a peregrine who, having a domicile in a place where the decree of Trent has not been promulgated, is present in a place...

[*Latin ed. p. 371*]

PARIS. 371, where the same decree is in force, and he contracts marriage there, and we inquire whether the permission of his own parish priest is necessary for the marriage to be valid. Indeed, although this person has a fixed domicile and a proper parish priest here, since the Trident decree has not been publicly proclaimed there, that parish priest has no right to assist

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in the validity of the marriages; and therefore, he has no power to grant permission to others to assist. And in this regard, for the purpose of validly contracting marriage for this person, it is the same as if he had neither a fixed domicile nor his own parish priest. Therefore, considering the matter effectively in this particular question, there is no difference in law between a vagrant and a traveler; and therefore, the example of vagrants, which is otherwise clearly different, is well suited and helpful for travelers. But I perceive a difficulty: against the validity of marriage, the common opinion of Doctors proclaims. This is indeed a serious difficulty, and not one that cannot be overcome. This opinion of the Doctors can be considered in two respects, namely, with respect to its scientific value, or with respect to its authoritative value. With respect to its scientific value, it is only as valid as the reasons upon which it is based. Furthermore, these reasons are no other than these: 1° because the Trident decree is a general law of the Church; 2° because the place governs the act; 3° finally, because it is decided in chapter 1 on betrothal and marriage. However, as we have already demonstrated above, the first and second reasons are of no value; and the third does not apply to the matter, because in the cited chapter 1 on betrothal and marriage, the Council of Trent decided that a marriage was valid, not precisely because the laws of the place in which the marriages were celebrated were observed, but because the observance of the laws, whether Saxon or French, did not pertain to the substance of the marriage contract, which was perfected solely by consent. If the opinion of the Doctors is considered with respect to its authoritative value, it must be carefully noted that it is far from being a common opinion.

[*Latin ed. p. 372*]

372 E X S « C - Among the Doctors, there is disagreement concerning the opinion of the Council, regarding the case in question, which requires the presence or permission of the proper parish priest; indeed, very few maintain this view: I have not found others, except for the aforementioned Consultor Canonist in *cit.* concerning marriages in Romana, and two others cited by him from the same source, namely Kugler in *De matr.*, no. 294, and Pignatelli, Vol. 79, no. 33. Indeed, these do not agree among themselves; for while the Consultor Canonist seems to admit, in the case of peregrines, the permission of the parish priest of their proper domicile, Pignatelli, on the contrary, holds that such peregrines, "by going to a place where they do not have their proper parish priest, make it impossible to observe the form prescribed by the Council in the place where they contract marriage." Truly, the common opinion among the Doctors is that peregrines coming from their homeland, where the Council of Trident is not promulgated, to a place where it is in force, if they contract marriage clandestinely, i.e., without the presence of a parish priest and witnesses, do so invalidly. Although this opinion does not have solid reasons in its favor, nor does it correspond to

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unquestionable principles of law, as appears from what has been explained above; nevertheless, it cannot be denied that it is supported by the gravest authority of the Doctors, from which, despite contrary reasons, I believe one should not depart. And this is all the more so, because concerning vagi, the matter is clear to all: namely, that the parish priest is the one for a valid marriage celebration, whether he is the parish priest of their place of residence, and if they have no place of residence, then any parish priest. However, as we noted above, in reality, there is no difference in law between vagi and peregrines in this particular question. Therefore, if peregrines, coming from a place where the decree of Trident is not promulgated, contract marriage in a place where it is in force, before the parish priest of the place where they actually reside, and with two witnesses, they are to be considered to have contracted validly. Now, if you wish, let us recall the principles we have explained so far concerning the marriage contracted between Germanus Bapst and Henrica de Laska. Although Germanus...

[*Latin ed. p. 373*]

PARIS. The petitioner has stated that she has been married 375 times in the parish of Saint Philip of Roule; however, it is maintained that she was not married in the city of London, where the decree of Tametsi was not publicly promulgated, but rather that she was married there by her own patron, and that this is conceded by the defenders of the marriage. Furthermore, the marriage took place in Paris, in the Church of Saint Peter of Chaillot, within the boundaries of the parish where the petitioner then resided, before the parish priest and witnesses. Therefore, considering the communication of the privilege, it must be said that the marriage was validly contracted. With regard to this matter, whether considered in fact or in law, I believe that the marriage was entirely valid.

OPINION OF THE SECOND CONSULTOR. The second consultor stated that he considered that two points needed to be examined: firstly, the jurisdiction and the facts presented by the petitioner's advocate; and secondly, the judgment regarding the interpretation of the Tridentine text proposed by the defenders of the marriage.

Regarding the first point, the petitioner's advocate begins by stating that it is surprising, and indeed true for all the centuries in which the Sacred Congregation has existed, that no question has ever been presented to the same Sacred Congregation for resolution concerning the validity of a marriage between persons who, having and perhaps retaining their domicile in a place where the Tridentine law regarding the form of marriage has not yet been promulgated, enter into marriage without the presence of their own parish priest, where that law is in force. Indeed, the Reverend Assessor S. O., in a letter dated May 3, 1898, addressed to the Reverend Secretary of the Sacred Congregation, testified in clear terms, after careful investigations in the archives of the Sacred Congregation of the Inquisition, that nothing

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had been found. This circumstance, if already surprising in itself, seems to create a significant difficulty for the examination of this case, since it is well known how much authority is given to matters that have been judged in a similar manner, especially in the Roman Curia, when it comes to uniform and consistent judicial decisions of the Sacred Congregations. However, this lack of similar judgments in this case should not be given too much weight. For even in the ecclesiastical forum, it is certainly true that...

[*Latin ed. p. 374*]

574 From the place in the Sacred Council, "judgment must be rendered not by examples, but by laws." Compare L. 13. C. De sent. et interloc. VII. 4 5. However, the chapter "Although" of the Council of Trent, especially after so many general interpretations by the Roman Pontiffs and the Holy Congregations, could not, without injustice, be called a somewhat obscure law, since it seemed that it could not be safely applied without a certain preceding series of judicial decisions; otherwise, the Fathers, to whom it was to be put into effect immediately after the Council of Trent, would have been in a sad and difficult condition. Furthermore, it should be noted that even some judicial decisions of the Sacred Congregation have been found in similar cases, but these are also not universal laws and general norms. For Benedict XIV, in a declaration concerning doubts regarding marriages in Holland, wrote: "Although His Holiness is not unaware that in certain particular cases, and after considering the circumstances then presented, the Sacred Congregation has responded regarding their invalidity, nevertheless, having also ascertained that nothing yet been definitively and universally decided by the Apostolic See regarding such marriages, He declares and establishes that (those marriages) are to be considered valid." It seems that the final clause of the declaration of Benedict XIV should not be omitted, in which the Roman Pontiff suggests the canonical principles that are to be applied in this very case in Paris: "Finally, concerning marriages that are contracted either in the territories of Catholic princes by those who reside in the allied provinces, or in the allied provinces by those who reside in the territories of Catholic princes, His Holiness has not wished to decree or declare anything new, but desires that in such cases, decisions be rendered according to the canonical principles of common law, and those resolutions issued by the Sacred Congregation in similar cases, which have been approved." Benedict XIV, as a private Doctor in his work on Synods, dioceses, book 1, chapter 6, number 14, explains this matter further and refers to his Instruction 33, in which he says that he has written about these rules of common law. Compare Van de Burgt, De matrim, p. 252. 255. If one attends more carefully to...

[*Latin ed. p. 375*]

PARIS. There are not entirely lacking similar causes of piety. Certainly,

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another cause, proposed by the Sacred Congregation of the Council in Paris in 1868, had the greatest similarity to the Parisian cause now under discussion. It concerned a wife, who, both before the marriage celebrated in Paris, had her true domicile in London, in her father's house; the husband, who was of a Roman noble family, appears to have retained his true domicile in the City; both spouses celebrated the marriage in Paris, in that parish in which neither of the contracting parties seemed to have acquired a true domicile or quasi-domicile. This Parisian cause, although discussed twice in the Sacred Congregation of the Council, was neither decided on January 11, 1868, nor on May 2 of the same year, but was postponed, and even after May 2, it continued, more on account of doubts about the facts than about legal questions, since further information was requested; however, it was never definitively resolved, as far as can be gathered from the records held by the Sacred Congregation of the Council. After the lawyer of the plaintiff testified that the Parisian process in the case of Henrietta had been meticulously completed, it is legitimately stated that an appeal was made to the Sacred Congregation of the Council against the judgment of nullity of the marriage by the Parisian judges on July 10, 1897, and although it seems to concern a matter hitherto unaddressed, yet, adhering to the opinion of the most distinguished authors and the authority of the Sacred Congregation of the Inquisition, I do not doubt that the Most Reverend Fathers have confirmed the judgment of the Archdiocesan Court of Paris. However, defenders of the validity of the marriage are present in the Sacred Congregation of the Council and in the Parisian Court. The defenders of the bond concede that there was no delegation in favor of the parish priest of Saint Peter of Chaillot. However, they differ on the question of law, that is, in determining the proper parish of the bride; the lawyer of the plaintiff believes that, in this case, the proper parish of the bride was solely the parish of London, while the defenders of the bond believe that such a bride should be equated with a vagrant, with regard to the observance of the Tridentine form, namely...

[*Latin ed. p. 376*]

376. From the pronouncements of the Council, it is clear that the parish priest in a place subject to the jurisdiction of the Council is the actual and simple pastor of the residents. After having explained all the ways of defending or impugning the validity of this marriage, which seem possible, the Consultor approaches the examination of the particular arguments of law and fact. It is beyond all controversy that, in all and each parishes of Paris, the *caput Tametsi* has been published and is in force, not only for Catholics, but also for baptized non-Catholics. This is well known in the Roman Curia, and therefore needs no extensive proof. Therefore, it is also well known that the *caput Tametsi* is in force in the parish of Saint Peter of Chaillot, and it is precisely in this parish that the case in question

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is being considered. Furthermore, there is no reason to doubt the other principle alleged by the lawyer for the plaintiff, which states that the proper pastor is the one in which someone has a true or quasi-domicile (unless we are dealing with vagrants), and that, according to the *caput Tametsi*, the proper pastor or Ordinary of at least one of the spouses is required to provide assistance in the marriage. The genuine notion of true domicile is also presented, which the Church has adopted, at least in substance, but without servile imitation, from Roman law. For, as Laurin rightly demonstrates in his excellent treatise on domicile (Archiv, iuris eccles, vol. 26, pp. 184 and following), in ancient ecclesiastical law, explicit laws of the Church concerning domicile are not found, but Roman laws are assumed and accepted. Furthermore, according to the law established by the Church, there does not exist any ecclesiastical domicile in a municipality, even if it is divided into several parishes, or in a diocese, or in the entire ecclesiastical province. Whether the Church wishes and can prudently change its established law is a question of future legislation; however, pending cases must be decided according to the law already established at the time of the marriage contract. The acquisition of true domicile is rightly said to be accomplished by two elements, namely, the actual habitation in a certain parish and the intention of permanently residing there, if nothing prevents it.

[*Latin ed. p. 377*]

PARISIAN. 377 And indeed, that opinion concerning the object of intention to reside throughout the entire municipality, and not in a specific parish, has hitherto been advocated by only one or two writers, and without solid reasons being presented; therefore, it is almost impossible to escape the mark of novelty. Furthermore, the words must be understood according to the common manner of speaking and understanding, and according to the practice of the Church; but the "place" of habitation has hitherto been understood by writers and in the practice of the Church, not of the municipality, but of the parish, or of the parochial territory. Cf. Instr. Card. Rauscher § 39 "Laurin /. c. p. 216, note 1. Finally, the proponents of this new theory allege no cause for marriage, in the opinion of the Holy See, in which a judgment has been rendered, from the practice of the ecclesiastical courts, and especially from the Sacred Congregations. On the other hand, not a few judicial proceedings concerning domicile in one of the many parishes of the same city (this very Parisian case of Henriette being no exception) would not have had any purpose or serious doubt, if the general intention of remaining permanently or for the greater part of the year in the city were sufficient to establish a true or quasi-domicile in this or that specific parish. Cf., for example, the Taurin case, December 17, 1767, presented to the Sacred Congregation. From this, it is easily concluded that the principle of law which was adopted to defend

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the validity of the marriage of Henriette is lacking a solid foundation, if we are speaking of established law, and not of law to be enacted, and therefore cannot serve to define this case. According to the advocate for the plaintiff, a quasi-domicile is established by residing in a parish with the intention of remaining there for the greater part of the year, if nothing prevents it. Consequently, a quasi-domicile is acquired by two elements, namely, the fact of residing in the parish and the intention of remaining there for the greater part of the year. This acquisition of a quasi-domicile takes import from the very moment when both of these elements are jointly verified. It is therefore clear that Giraldi, *Expos. iur. pont.* P. I, sect. 741, app. I, and others, such as Bangen, who, in addition to those two elements, mention the actual prolongation of the...

[*Latin ed. p. 378*]

378 The Holy General Council's decree requires a continuous dwelling for the entire month, as is clearly stated in Instruction S. O. of June 7, 1867: "From the very first day on which these conditions concur, namely, both the aforementioned intention and actual dwelling, it must be considered as having acquired a quasi-domicile." With this declaration, the Holy See explicitly confirmed a doctrine that had already been widely accepted by writers. See Laurin, I, chapter 1, pages 202 and following. It must be added, with greater certainty, that, according to the aforementioned Instruction S. O., not any dwelling is sufficient to establish a quasi-domicile; for these words are added: "Furthermore, it is also evident that actual dwelling is not sufficient to create a quasi-domicile, if someone resides in that region in the manner of a vagrant or traveler, but rather in the manner of one who truly and properly 'dwells,' as 'others' usually do who have a true and proper domicile in the same place." However, it does not follow from this that a completely honest motive is required for that dwelling; otherwise, for example, an usurer or a concubinarius would not be able to acquire a quasi-domicile. See Sánchez, De sanet. matr. sacr., I, III, disputation 23, number 12, and others, for example, Laurin, loc. cit., page 201. With these premises, it is now easy to agree with the advocate of the plaintiff that a quasi-domicile can be acquired in the manner described; but the other question remains, whether a quasi-domicile is acquired solely in this manner. The advocate, in this matter, appeals to the "juris romani et canonum." But the fact that the Church has borrowed the notion of quasi-domicile from Roman law is, to this day, not sufficiently proven; moreover, explicit canons regarding quasi-domicile do not exist in ancient ecclesiastical law, and indeed, even in our time, a clearly expressed and universal pontifical law regarding quasi-domicile has not yet been promulgated. Rather, the notion of quasi-domicile is a certain invention of the ecclesiastical forum, gradually introduced through the theories of learned men, judicial practice, and finally confirmed by the judgments and Instructions of the Holy See.

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The oldest trace of this quasi-domicile is found in the rescript of Honorius III (from 1216-1227), in which it is discussed about a do-

[*Latin ed. p. 379*]

PARIS. There exists a certain principal domicile, to which is opposed a secondary domicile. But this new terminology of "quasi-domicile" appears to have been first encountered in the fourteenth century, and finally, from the last century, it has been universally and consistently accepted in the ecclesiastical forum and among writers. Regarding this notion of quasi-domicile, theologians and canonists have diverged into five different opinions, until finally, in our age, the already lax opinion of Pontius regarding a very brief sojourn has been rejected, and the opinion concerning the sufficiency of one month, or a notable part of the year, or six months, has also been rejected, and the opinion previously explained, concerning a sojourn in a parish with the intention of residing there for a greater part of the year, has been adopted. With these premises, it is now scarcely doubtful that this theory of law concerning quasi-domicile, derived from the acts of the Parisian cause of 1868, and alleged as a third method of defining this new Parisian cause, is solidly founded and safe, at least if one considers the established law. For the canonical doctrine presented in the Instruction of the Holy Congregation for Inquiries, which this new theory cannot be reconciled with, is now held as absolutely certain, not only in theory, but, which is of greater importance, also in practice. For according to this doctrine, not only are marriages declared null, but a declaration of nullity made also undoubtedly permits new marriages. This could not be the case, unless this doctrine were entirely certain; otherwise, the Holy See would manifestly expose itself to the danger of violating the divine law concerning the impediment of consanguinity. Cf. Gasparri I, c., n. 916; Lehmkuhl I, c., vol. II, n. 782. It cannot be admitted that this certain and commonly accepted discipline concerning quasi-domicile in France, and especially in the archdiocese of Paris and its parishes, has remained unchanged by some particular law or legitimate custom. For, in the first place, this doctrine of the Holy See concerning quasi-domicile has also been applied in practice in these most recent Parisian causes (cf. cause Paris. 14 Dec. 1899 apud Gasparri I, c., n. 932), and no dispute has arisen concerning the law.

[*Latin ed. p. 380*]

380 FROM THE DECREES OF THAT PARTICULAR COUNCIL held at Paris. Especially in this new case at Paris, in which so many judges intervened – defenders of the bond, learned men – no one challenged that particular custom of Paris, although it would have provided the defenders of marriage with very strong arguments to demonstrate the validity of the marriage impugned by Henrietta. Hence, even the very existence of this custom, which is still in force today, has not been sufficiently proven; and

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this is entirely necessary, for a particular custom is a matter of fact, and things that consist in fact are not merely to be alleged, but must be proven. Therefore, just as a true and complete domicile is acquired through the fact of residing in a parish, joined with the intention of permanently remaining there, if nothing intervenes, so certainly it is lost by both, namely, by actual departure with the intention of not returning. Cf. Sánchez, c. I, III, d. 23, n. 2. This opinion is beyond doubt and free from controversy. For, according to the rule of law: "Every right, by whatever means it is acquired, is lost by the same means." Therefore, since two causes are necessary to establish a domicile, so too, two causes are required to dissolve a domicile, namely, actual departure from the parish and the intention of not returning. Hence, because legitimate rights already acquired are more difficult to lose than those acquired from the beginning, therefore, mere actual departure, e.g., even for a long journey, while the intention of returning to the parish where the domicile is sought, is by no means sufficient to dissolve the domicile. Cf. Feije, I, c. Conversely, he who already has a firm intention of abandoning his domicile in a parish and of not returning, but actually continues his residence there, still retains his domicile in that place. Hence, "a bride (thus Van de Burgt, De matrim., p. 203), having a fixed domicile in the Parish of B, but intending to transfer her domicile on the very day of the marriage to the Parish of the bridegroom, F, can, on that very day, before she departs, enter into marriage before the parish priest of the Parish of B; for she loses her domicile not by intention alone."

[*Latin ed. p. 381*]

PARIS. 381, concerning the transfer of domicile, but with a mental and actual departure from the previous location." Finally, the loss of domicile occurs concurrently with a real departure from the parish, when, with the intention of not returning, P. Tarquini, in his written opinion against the validity of marriage in the case of *Parisiensis* from 1868, discussed in the Sacred Congregation of Councils, excellently explains: "Indeed, there is no doubt that even Francisca, as she originated from London (that is, that Francisca, being a minor girl, had a true domicile in London in her father's house, just as, in our case, Henrietta also had a true domicile in her mother's house in London at a younger age), lost her London domicile when she followed Paul. From that time, she abandoned her paternal domicile in order to permanently adhere to Paul's domicile. Thus, the doctors commonly state, who specifically address this case, that is, the case of a completely invalid marriage, in which a woman leaves her paternal domicile and follows the domicile of the betrothed. Quarto infers that, as Barbosa states in *De officio et potestate Episcoporum*, page 2, allegation 32, number 67, a woman who, before her parish priest, contracted an invalid marriage and then moved to the house of the betrothed, residing in another parish with the intention of remaining there permanently, cannot afterwards, before

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the same priest, validly celebrate the marriage again; for he is no longer considered her proper parish priest, since the woman lost her first domicile as soon as she began to reside in the parish of the betrothed with the intention of remaining there permanently. Thus, Sánchez, etc." Thus, P. Tarquini, where he discusses the revalidation of a marriage which he considered to have been invalidly contracted. If this opinion is certain, in the case of those who are sui iuris, or are of mature age, and who have a voluntary domicile (as is evident from all those who emigrate to America with the intention of not returning to Europe; cf. Gasparri, *loc. cit.*), nevertheless, a serious difficulty remains regarding those who have a necessary domicile, and, as long as they are children or daughters who are not yet emancipated from their father's authority, they retain their domicile at least until they reach their majority.

[*Latin ed. p. 382*]

382. Furthermore, the true domicile is in the paternal or maternal home, which children cannot freely abandon according to their own will, unless they have reached the age of majority or have obtained emancipation. Cf. Gasparri, *Loc. cit.*, n. 925; Laurin, *I. c.*, p. 181, 240 sq. Undoubtedly, minor children have a necessary or legal domicile in the paternal or maternal home. Cf. *L. 4 Dig.*, *de his qui sui*, 1, 6; Instruction of Cardinal Rauscher, § 41; Provincial Council of Gaii, in *Collect. Lac.*, vol. IV, *I. c.*; Laurin, *I. c.*, p. 171 sq., 240 sq. However, it is also certain that minor daughters (regarding whom doubt arises only in this place) can acquire a quasi-domicile in the parish of the institution, where they are placed by their parents for the purpose of education, for a significant portion of the year, or even for several years. Therefore, these girls can, with full validity, celebrate marriage either in the parish of the paternal domicile, or in the parish of the institution, which they have not yet abandoned in deed or in mind. It is now beyond doubt that those who have a necessary domicile, such as a banished person in the place of banishment, a religious in the monastery assigned to him, or a cleric with a benefice residing in the place of the benefice, cannot, for their own will, validly abandon their domicile without legitimate consent. Therefore, at least in general terms, the same should be said of minor daughters, who also have a necessary domicile in the paternal home. Cf. Laurin, *I. c.*, p. 181, 190 sq. However, on the contrary, it is quite certain that, according to Roman law, a son or daughter can, at least with the consent of the father, change their domicile, even the necessary one (cf. *L. 3. 4. 17. § 11. Dig. L. f.*); therefore, since the Church generally (although not in all respects) adopts Roman law regarding domicile, a minor daughter can also, at least with the consent of the father or the mother who has succeeded him, change her domicile. Cf. Laurin, *I. c.*, p. 181, note 5; Scherer, *I. c.*, p. 150, note 40. Furthermore, since we are not dealing with any change of domicile from the paternal home, but with one

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that occurs in order to celebrate marriage, to receive the sacrament, or to choose a state of life,

[*Latin ed. p. 383*]

PARISIAN. It seems difficult to understand how, in ecclesiastical matters, a change of domicile by a minor, with respect to the celebration of marriage, should depend on the consent of the father. For in chapter 3, concerning judgments, II, 1 in Sext., it is written: "If you have completed the fourteenth year of your age in benefices and other spiritual causes, as well as those dependent on them, and if you were twenty-five years old, you must be admitted to act and defend, either by yourself or by a procurator whom you have appointed for this purpose." And at the end of the same chapter, it is added: "In such litigations or causes, anyone under the power of the father must not be legally present in court without the consent of the father, and if the father does not wish to be involved in them, his consent will not be required." Indeed, a matrimonial cause is evidently a spiritual cause; therefore, even a minor who has already passed the age of fourteen does not seem to depend on the consent of his father in matters also dependent on a spiritual cause. Furthermore, "marriages must be free," as it is said in chapter 29, X, IV, 1, concerning betrothals and marriages, and the Council of Trent, Session XXIV, chapter 1, concerning the reform of marriages, declared that marriages contracted by children without the consent of their parents are not invalid; certainly, this freedom in celebrating the marriages of children seems greatly restricted if, in acquiring or relinquishing a domicile with regard to the celebration of marriage, they were to depend on the consent of their parents. Moreover, the doctrine of Benedict XIV, transmitted at the end of his Declaration for Holland, must be recalled. Indeed, there, he declares that marriages contracted in the territories of Catholic princes by those who have their domicile in the allied provinces, and those contracted in the allied provinces by those who have their domicile in the territories of Catholic princes, are to be judged according to the principles of canon law common to all and the resolutions issued by the Sacred Congregation. But the same Benedict XIV, as a private doctor in his work on the diocesan synod, I, VI, chapter 6, number 14, among other things that contribute to explaining the aforementioned Declaration for Holland, teaches in clear terms that sufficient provision has been made for these marriages by the principles of canon law.

[*Latin ed. p. 384*]

584 From the rules established by the Council of Trent concerning those who, having left the region in which they reside (and maintain residence), wish to contract marriage there, without having acquired a new domicile or quasi-domicile elsewhere, and he states that he has followed those rules in his *Institutiones* 3, 3. Indeed, that *Institutio* 33 teaches: "Concerning

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those who, having left the region in which they reside, and without having acquired a new domicile or quasi-domicile elsewhere, contract marriage there," their marriages are invalid, and this is easily demonstrated by the Council of Trent. Therefore, from the teaching of Benedict XIV, it is found in the chapter *Tametsi etiam vis localis*; for in the case presented, it could not have provoked the personal jurisdiction; for Van de Burgt rightly notes in I, c., p. 249: "Therefore, the decree concerning heretics (who are domiciled in Holland and later move to Catholic regions) cannot be annulled on the basis of personal jurisdiction, which is established by law; for they are not bound by the decree in the place of their domicile; therefore, there is no reason for the decree to be valid based on the local jurisdiction." Nor should the arguments be disregarded, which, at least indirectly, prove this maxim from the competence of the ecclesiastical judge: *Locus regit actum*. Cf. chapter 20, X, on the forum of competence, II, 2, chapter 1, on the forum of competence, II, 2, in Sext.; Laurin I, c., p. 228, note 2. For one of the reasons why the Church also admits the forum of competence is that the decision in a case of contract must be given according to the laws that are in force in the place where the contract is celebrated, and certainly these laws are better known there. Cf. Schmalzgr. I, II, vol. 2, n. 30, 40. The advocate for the plaintiff briefly touches upon and seeks to refute the doctrine of the defender regarding jurisdiction in the Paris court, which he calls "subtle" in this place, but later "absurd." Since this doctrine will be examined later in § 2° of this opinion, I refrain from any inquiry here, and immediately proceed to another flaw that seems to be found in n. 15 in the district of the advocate for the plaintiff. There, he touches upon the question of vagrants; but he does not sufficiently consider that there are two species of vagrants, who truly and properly lack a domicile or quasi-domicile. For, (it follows),

[*Latin ed. p. 385*]

PARISIEN. 385, as Sánchez teaches in I, chapter I, section III, paragraph 25, number 1: "Those who have no certain and permanent dwelling or home, but wander from place to place." And these wanderers, who "habitually" wander through uncertain places, and are often called "vagabonds" in the common tongue, are clearly discussed by the Fathers of Trent in Session XXIV, chapter 7, concerning marriage reforms: "Many are those who wander and have uncertain dwellings, and who, being of wicked character, having abandoned their first wife, take another, and often several others, while the first is still living, in different places. Wishing to remedy this vice, the Holy Synod warns all those to whom it pertains, as fathers, not to readily admit these wandering individuals into marriage; and it commands pastors not to celebrate their marriages, unless they have first made a diligent inquiry and, having reported the matter to the Ordinary, have obtained permission from him to do so." But these individuals who habitually wander through uncertain places are clearly different from peaceful

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and honest people who, for a short time, or as some more recent writers say, momentarily are truly wanderers, or who are, in fact, without a dwelling or quasi-dwelling. This latter type of wanderer was well known to ancient and modern writers (cf. Sánchez I, chapter, number 4, and following; Feije I, chapter, number 238), and therefore, they unanimously hold that these momentary wanderers, who, having left their former parish, transfer to another, perhaps within the same city, and who, while the house to which they transfer is being prepared for its inhabitant, are lodged in the house of another parish, are true wanderers, and that the strict precept given by the Council of Trent to pastors concerning wanderers who habitually wander through uncertain places cannot be applied to them. After discussing the legal proofs presented by the advocate of the plaintiff, the consultant proceeds to the facts: "A priest who was not the proper pastor or Ordinary was present at the marriage contracted by the plaintiff, and who had not obtained or requested a delegation from the proper pastor or from the Ordinary of either of the spouses: and the groom was not a wanderer." This is the conclusion of the Act, Volume XXXII, page CCCLXXIX, number 25.

[*Latin ed. p. 386*]

586 From the Decrees of the Council of Trent, which the advocate for the actress invokes concerning the validity of the marriage, assuming the truth of the facts briefly stated: Before only one proper parish priest, either of one of the parties, or of the true domicile, or of the quasi-domicile, or in the case of those who are not domiciled, of a simple and actual residence, marriages can be validly celebrated among the baptized faithful in the parishes of Paris. However, Germanus, the bridegroom, certainly did not celebrate the marriage with Henrica before his proper parish priest or his delegate. For Germanus, at the time of the marriage, had his true domicile in the parish of Saint Philip of Rule, as is clearly evident from the records. Furthermore, the parish priest of Saint Philip of Rule, neither personally nor through his delegate, was present at this marriage, but rather the Second Vicar of the parish of Saint Peter of Chaillot, delegated by the First Vicar of the same parish of Saint Philip of Rule. This, indeed, is again clearly evident from the records of the Summary. Moreover, Germanus had not acquired any quasi-domicile in the parish of Saint Peter of Chaillot, because, although he was, in fact, present there at the time of the preparation and celebration of the marriage with Henrica, he never abandoned his true domicile in the parish of Saint Philip of Rule, nor did he ever, by word or deed, manifest the intention of residing for a greater part of the year in the parish of Saint Peter of Chaillot. Hence, also, the parish priest of Saint Peter of Chaillot (or his delegate) could not be considered the proper parish priest of Germanus, even under the title of quasi-domicile. Finally, since Germanus, at the very moment of the marriage contract, had and retained his true domicile in

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the parish of Saint Philip of Rule, he could in no way be considered a "vagabond," and therefore the parish priest of Saint Peter of Chaillot, under the title of simple residence, could not validly assist at the marriage of Germanus as his proper parish priest. In this matter, the advocate for the actress must insist; for the facts are certainly established by the proceedings. Therefore, the entire discussion is reduced to the question:

[*Latin ed. p. 387*]

PARIS. 387. Whether, in this marriage, the proper parish priest of the bride was present, at least, who would be competent according to at least one of the aforementioned titles. Certainly, if, at the time of the marriage, Henrietta had both a true domicile in the parish of London and resided in the parish of Paris, Saint Peter of Chaillot, (speaking conditionally and assuming the facts), it is evident that the proper parish priest of Henrietta in London was neither present in person nor through a delegated priest; indeed, he did not even consider requesting such a delegation from the parish priest of London. Therefore, if the matter is reduced to this, that the parish priest of London was the proper parish priest due to her true domicile, it is also certain that this parish priest was not present at Henrietta's marriage. But, did perhaps a priest or a properly delegated priest attend, who were competent or proper based on a quasi-domicile acquired by Henrietta in Paris? Indeed, Henrietta came to Paris to complete her education in the monastery of the Assumption. On this occasion, before entering the aforementioned monastery, she certainly stayed for a short time with her aunt, Sophia Fries, whose house was located within the boundaries of the parish of Saint Peter of Chaillot. However, the lawyer for the plaintiff completely denies that Henrietta acquired a quasi-domicile during this brief visit with her aunt. For, considering all the circumstances, Henrietta did not intend to live in her aunt's house for a significant portion of the year, but rather, for the purpose of her education, to enter the monastery of the Assumption soon. Therefore, even if she perhaps had such an intention (which is quite unlikely), she certainly lost the quasi-domicile with her aunt, because she abandoned it in fact, and her entry into the monastery of the Assumption, nor can the brief visits that Henrietta occasionally made to her aunt's house, while she resided in the monastery of the Assumption, in any way be concluded to mean that she established a quasi-domicile in her aunt's house and maintained it, even at the time when she resided in the monastery. This, of course, could be imagined, if, as a student,

[*Latin ed. p. 388*]

388. From the records of the Council, it appears that she had only attended the school for a short time, but it is undeniable that, by residing in the convent of the Assumption, she acquired a quasi-domicile, as did the other girls residing there. Furthermore, it cannot be denied that Henrietta,

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by reason of her residence in the convent of the Assumption, acquired a quasi-domicile in the parish of Saint Mary of Auteuil, within which the convent is located, because, in fact, Henrietta resided there with the intention of remaining there for at least a significant portion of the year, indeed, perhaps for the entire school year, had those premature nuptials not been arranged. For, Henrietta certainly entered the convent, as did the other girls being educated there, who, under ordinary circumstances, are said to acquire a quasi-domicile. Moreover, if, after a month of residence has elapsed, there is any presumption of a right to reside for a significant portion of the year, this becomes certain if the girl actually remains in the institution for more than six months, and then, by chance, leaves before the end of the school year due to a marriage offered to her. However, that entire quasi-domicile in the parish of Saint Mary of Auteuil is of no consequence, because Henrietta lost it before the marriage was celebrated; for she left the convent with the intention of celebrating the marriage soon, not of returning. Furthermore, the marriage was not celebrated before the parish priest of Saint Mary, or his delegate, but before a delegate of the parish priest of Saint Peter of Chaillot. Therefore, the entire discussion regarding the quasi-domicile reverts to this: whether Henrietta, after leaving the convent of the Assumption, acquired a quasi-domicile in the parish of Saint Peter of Chaillot. This is what the lawyer for the plaintiff rightly denies, and he solidly proves his denial. For, after leaving the convent, Henrietta resided with her mother in a public inn (Hôtel Meyerbeer) which is located in the parish of Saint Philip of Roule (the parish of the bridegroom), and soon afterwards, together with her mother, she moved her residence to the parish of Saint Peter of Chaillot, where her mother rented a house suitable for receptions during the wedding season for six weeks. Therefore, in the case of Henrietta, she did not have a quasi-domicile in the parish of Saint Peter of Chaillot, by reason of the quasi-domicile of her mother.

[*Latin ed. p. 389*]

PARIS. 589. Because the mother could not communicate with her minor daughter, since she herself did not possess the Sacrament. Therefore, the only title by which the parish priest of Saint Peter of Chaillot can be called the proper pastor of Henrietta is the title of simple and actual residence, if Henrietta was a vagrant. Indeed, no one can doubt that Henrietta, being brought by her mother, had a simple, yet certain, dwelling place in the house. But was Henrietta truly a vagrant? The lawyer for the plaintiff absolutely denies this, but he does not add any conclusive arguments to his resolute denial. It would certainly be a manifest error if anyone were to say that Henrietta was habitually a vagrant at the time of the marriage contract, who, through uncertain dwellings, e.g., as a dancer, is considered a vagrant according to the description of vagrants given by the Council of Trent, Session XXIV, chapter 7, on the reform of marriage. But could

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it be that Henrietta, when she contracted marriage with German in Paris, in the parish church of her actual residence, was perhaps a vagrant for a moment or for a short time? This condition of momentary vagrancy would certainly have been sufficient for the parish priest of Saint Peter of Chaillot to validly assist in the celebration of the marriage of Henrietta and German. Certainly, Henrietta had neither a true nor a quasi-domicile in Paris, when she 'celebrated' her marriage with German; therefore, Henrietta would certainly be counted among the vagrants from her residence in Paris. If it is asked whether Henrietta perhaps had a true domicile or quasi-domicile elsewhere, as German had a true domicile and maintained it in the parish of Saint Philip of Roule, one can only doubt whether Henrietta maintained a true domicile in the parish of London, where she previously had a true domicile in the maternal home. If Henrietta had been of age or already emancipated, when she contracted marriage in Paris, it could certainly be doubted whether Henrietta should be included among the vagrants. For sons, after they have become of age or emancipated, no longer retain a necessary or legal domicile in the paternal home, and for their own right, they have the paternal home.

[*Latin ed. p. 390*]

390. Those who are under the authority of a Council can, indeed, abandon it (cf. Gasparri, *Iuris Canonici*, n. 925), but, on the other hand, they do not, by that very act, or by the very law, lose any domicile within the paternal home, as soon as they reach the age of majority or are emancipated. (Cf. Laurin, *Iuris Canonici*, p. 190, note 3, p. 242, note 8). Rather, their domicile, whether necessary or legal, passes into a voluntary one, if the children actually continue to reside in the paternal home and have no intention of leaving, just as a wife, after the death of her husband, no longer has a legal or necessary domicile as a wife in the parish of her husband (cf. L. 22, § 1, *lib. 38*, § 3, *Dig.*, *ad municip.*, *lib. 1*), but her domicile remains a voluntary one, if the wife actually continues to reside there and has no intention of leaving. Therefore, if Henrietta had been of age or emancipated, she could freely have relinquished her voluntary domicile, even within the paternal or maternal home. However, at the time of the marriage contract with German, Henrietta was neither of age nor emancipated, but a minor. Furthermore, even if she had been of age, considering all the circumstances, she certainly did not, in fact, abandon her domicile in London, which she had established, before the marriage. For, although one condition for the loss of a true domicile, namely, actual departure, was fulfilled in Henrietta's case (for it is evident that Henrietta had left London and had been in Paris for almost eight months at the time of the marriage), the other condition, namely, the intention of leaving, cannot be admitted in Henrietta's case, before the marriage, for the purposes of ecclesiastical law. For, by such an act, without any necessity, Henrietta would have made herself a vagrant.

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If any doubt remains, the law itself interprets the will of the contracting party; indeed, in X. 32, *Dig.*, *ad municip.*, L. 1, it is stated: "She who is betrothed does not change her domicile before the marriage." To this provision of Roman law, when there is no express and distinct canon law, one must undoubtedly adhere also in ecclesiastical matters. These things are certainly true in the case where Henrietta was of age.

[*Latin ed. p. 391*]

PARIS. It is most certain that, if one considers the matter, Henrietta, being a minor, could not, by her own right, have absolutely deserted the marriage contract before the marriage was consummated, nor could she have relinquished her domicile in the house of her mother, even if Henrietta or her mother had so desired. For the private will cannot alter an absolute legal disposition, according to L. 38 of the Digest, De pactis II, 14: "Public law cannot be changed by private agreements." But minors, by the very disposition of the law, have a true domicile assigned to them, either in the paternal or maternal home, which is in no way subject to the arbitrary will of the minor or their parents.

After the Counsel had spoken of the deductions of law and fact made by the advocate for the plaintiff, he began to speak of the interpretation of the Tridentine text proposed by the defenders of the marriage. The Fathers of Trent say in the first part of chapter XXIV, "Although the reasons by which they were led to enact new laws concerning the celebration of marriage are chiefly cited, nevertheless..." Since the reason for a law is not the law itself, and from general reasons given, a specific law, and much less a law that is invalidating, cannot be deduced, the Fathers of Trent, in the second part, give a certain prescriptive law (the Holy Synod commands) concerning the announcements of marriages, to be made by the contracting parties to their own parish priest, a law which was amplified by the Council of Lateran IV, but never transformed into an invalidating law. For the Synod only commands, and the clause that would make it invalidating is nowhere added. Then follows the third part, in which the form is accurately defined, by which at least the parish priest (although the word "properly" is not expressly added) and two or three witnesses present must celebrate [the marriage]. Because it is only said: "Let it be celebrated," therefore this prescription would have been a merely prescriptive law, which would have made the celebration of the marriage without the Tridentine form illicit, not invalid; for that prescriptive law, lacking an invalidating clause, and not having been enacted in the terms of invalidating laws, would not have been a truly invalidating law. Cf. Suarez, De leg. I. V, cap. 25, 26. Hence, the Fathers of Trent finally added the fifth part, in which seems to be the

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crux of the present controversy.

[*Latin ed. p. 392*]

592 From the Council of Trent, and it is clearly stated in a clause formulated with these words: "Those who, without the presence of a parish priest (the proper word is not added again) or another priest, and without the license of the aforementioned parish priest or Ordinary, and with only two or three witnesses, attempt to contract marriage, the Holy Synod declares to be entirely incapable of so contracting, and decrees that such contracts are void and null, as it declares and annuls them by the present decree." The interpretation of the text of Trent, which is provided by the defender of the Paris Curia, is not entirely new. Father Tarquini, in another case discussed in Paris in the year 1868 (1), briefly and clearly recounts and explains it with these words: "What I have heard said by someone, that those coming from a place exempt from jurisdiction to a place subject to the law of Trent, are indeed required to marry before the parish priest, but that the parish priest himself can, at his own discretion, choose, as is granted to vagrants; I cannot, in any way, prove this. For this is new and unheard of; and I have never seen it judged in this way, but always the contrary." Nor does the defender of the Sacred Congregation believe that he is holding a new doctrine, if he considers the theory of the defender of the Paris Curia to be sound, and supports it with the distinction extensively explained in the aforementioned passage: "Those who, etc." The advocate for the plaintiff briefly and correctly explains this distinction with these words: "The celebrated Decree of the Sacred Congregation of the Holy Office: 'Those who, etc.' divides into two parts, asserting that one part, as it regards the contracting parties, is only disabling, and the other is invalidating, and attempts to demonstrate that it is possible for someone to be bound only by the first part of the decree, or only by the second, or by both, so that he concludes that the Plaintiff was subject only to the first part of the same decree, but only to the second, which, according to the opponent, does not in any way require the presence of either of the spouses before the parish priest." Thus far, the advocate for the plaintiff, who immediately adds: "Honorable Fathers, if it is permissible for us to speak frankly, the division presented to us seems to us to be utterly absurd."

(1) Recueil, Vol. XI, 567.

[*Latin ed. p. 393*]

595. Truly, the opinions of Father Tarquini and the advocate of the actress, which they have presented and defended, are not embellished with honorable epithets. Although it seems to me, from the very beginning, that I ought to frankly admit that I cannot agree with the interpretation of the Tridentine text given by both defenders of the marriage bond, nevertheless, I abstain entirely from harsh judgments and notes. For I can scarcely per-

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suade myself that any interpretation is openly absurd, which at least has the effect of postponing this matrimonial cause and requiring the opinion of two consultants. Indeed, matrimonial causes require a prompt decision, but on account of absurd interpretations, judicial sentences are not usually postponed by the Eminent Fathers, nor are useless opinions of consultants required concerning absurd interpretations. Nor should it be omitted that both Father Tarquini and the advocate of the actress resort, at least, to some weak arguments, or arguments of very little importance. Certainly, if Father Tarquini exclaims with emphasis that he has never seen such a judgment, this is an argument *petitio principii* [begging the question], derived from ignorance or lack of knowledge; but from a lack of knowledge, it is not solidly proven that something does not exist, for even the most learned consultant can easily overlook decisions of the Sacred Congregation, which are rarely given and perhaps for a very long time, especially in the Sacred Congregation [of the Holy Office], which does not usually promulgate such decisions in matrimonial causes. If the same consultant adds that he has always seen the contrary, this is clearly a fallacy of *argumentum ad hominem*. How could he have seen contrary decisions perpetually given, when, after a careful investigation, even in the archives of the Sacred Congregation, no such decisions were found, which the Secretary of the Sacred Congregation completely ignored in the case of Paris in the year 1868, where he accurately recounts the cases relevant to the matter, but not even one that would pertain to this. The same thing happens in the initial proposition of this cause, where, in the official report concerning similar cases decided by the Sacred Congregation, there is complete silence, and the advocate of the actress frankly admits that a case completely new and not decided for centuries is being submitted to the judgment of the Eminent Fathers. Finally, this is the crowning argument. After that solemn exclamation concerning Paris.

[*Latin ed. p. 394*]

594 Contrary to the decisions perpetually given and observed by the Sacred Congregation, one would have undoubtedly expected that P. Tarquini, following the custom of consultants and the practice of the Sacred Congregation of the Council, would at least present one of the cases he had examined; but, marvelously, he does not propose even one, but insists on other (indeed, solid) arguments. Therefore, this exclamation must be included among general assertions that are not sufficiently proven. Similarly, the advocate for the plaintiff, in his second or subsidiary writing, number 3, presents solid principles regarding the proper parson of the contracting parties, from which a true conclusion can be deduced, and number 7 refutes, in a completely peremptory manner, the exception raised by his opponent regarding his own parson. However, what is in number 4 concerning the competent forum and the general law, and especially the

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arguments with which numbers 5 and 6 insist, will not appear to all learned men to be so peremptory that a manifest absurdity in the contrary opinion can be clearly demonstrated. For certainly, the competent forum is determined by the place of the contract, but this argument is derived from an analogy concerning the competence of a judge and the competence of a parson for the assistance of marriage; but arguments derived from analogy in law are often dangerous. Furthermore, the established law concerning ordinary contracts of purchase and sale is extended to the completely singular contract of marriage, which is also a sacrament; such an extension of a general principle to a completely special and unique case is not so clear and evident. Finally, what is worse, that competent forum, according to common opinion, cannot be applied to foreigners who celebrate contracts in a place through which they are passing (and in the case in question, the advocate for the plaintiff is dealing with a foreigner). Cf. Piringer I. IL § 2, n. 36. Indeed, if the question arises concerning the competence based on the place of the marriage contract, the Sacred Congregation Inquisitorum and the Sacred Congregation de Propaganda Fide, and Cardinal Rauscher in his Instructions concerning the matrimonial process, do not mention that title of the competence of the matrimonial judge at all. "Furthermore, no author of any authority (as Gasparri says, op. cit., n. 1169) expressly mentions this." Therefore, one may not unjustly suspect...

[*Latin ed. p. 395*]

PARISIAN. 395: "This forum may be suitable only for civil contracts, about which (the authors) speak only, and it does not pertain to marriage." This limitation certainly does not constrain the Apostolic See, whose territory is the entire world; therefore, the Sacred Congregation frequently, although not always, appoints delegated judges in the place of marriage contracts. Furthermore, if the advocate for the plaintiff argues from the nature of a general law, which was granted to the head of Tametsi, I have already demonstrated above that the nature of this head is entirely singular, and that its promulgation in each parish makes the application of the law concerning other general laws dangerous, and certainly not peremptory, because a genus can be derogated from by a species; therefore, the solution to the difficulty seems to be sought elsewhere, from the very special law of the head of Tametsi. Indeed, Sánchez I, c. t. III, disp. 18, n. 26 sq. (to whom the advocate for the plaintiff later appeals, n. 6), does not, from that principle of general law, repeat the obligation of pilgrims to observe the Tridentine form, but from another axiom, that the law of the place governs the act, and that even pilgrims, when entering into contracts, should ordinarily (Sánchez I, c. n. 11, admits an exception) observe the formalities prescribed by the law of the place. Finally, the advocate for the plaintiff, in n. 5 and 6, proposes an argument from the decree of Urban VIII, August 14, 1627, and this is indeed the common opinion of doctors. But the defenders

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of the bond will be able to answer the allegation that the decree of Urban VIII is not relevant to the matter. For the decree of Urban VIII concerns faithful who, having retained their domicile in a parish subject to the head of Tametsi, migrate to another parish exempt from the head of Tametsi. These faithful are clearly bound by a personal obligation even in the exempt place, unless they acquire there at least a quasi-domicile. But in this case, we are dealing with the application of the Tridentine law, if someone comes from an exempt place, and perhaps having retained their domicile there, to a parish that is not exempt. Urban VIII does not deal with this case expressly; moreover, in such a pilgrim, for example, an Englishman, there is no personal obligation, but at most a local one, which the defenders of the bond do not deny. But before which par

[*Latin ed. p. 396*]

396 From the decrees of the Holy Council, it cannot be inferred as a matter of right that, concerning this matter, there is nothing expressly stated. Therefore, the advocate for the plaintiff would do well to appeal to the final clause of the declaration of Benedict XIV concerning Holland. In place of "Coronidis," it should be added that the advocate for the plaintiff interprets the decree of Urban VIII, in agreement with a certain opinion of some doctors, in such a way that the marriages alleged in the first and second cases, which Urban VIII declared to be invalid, "were not declared invalid because of the impediment of the contracting parties, but rather as a punishment for fraud." However, if the very text of the decree of Urban VIII, properly explained, is not to be feared by the defenders of the marriage bond because of the difference in the case, much less can a false interpretation of that decree be alleged as a legitimate argument. For it is now long since it has ceased to be doubted that the marriages in the first and second cases are invalid precisely because of the personal impediment of the contracting parties, and not formally as a punishment for fraud. For, from the Instruction of the Sacred Congregation and from the repeated decisions of the Sacred Congregation for Rites and the Sacred Congregation for Inquisitions, it is now certain that such marriages are certainly invalid, even if the contracting parties, without any fraudulent intention of celebrating the marriage and avoiding their own parish, have left their parishes subject to the law of Trent and have, in good faith, celebrated the marriage in a parish exempt from that law, before a priest (not their own). For the law of Trent is local and personal, as is clear from the Instruction of the Sacred Congregation, December 14, 1859. But that personal obligation in those who leave a parish subject to the law of Trent does not cease, unless they have acquired, in the place exempt from the law of Trent, at least a quasi-domicile, or have become vagrants. Therefore, the contracting parties truly act in fraud of their own parish priest as long as they have not fulfilled the conditions established by the law itself to obtain immunity

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from that personal obligation. Since this opinion has been adopted by the Sacred Congregation for Ordinary Causes and the Sacred Congregation for Inquisitions in numerous declarations of nullity of marriage, it has become so certain that it has lost all probability of being contradicted. Cf. Gasparri, c. n. 985 sq. Therefore, that collection of opinions, which is alleged in favor of some common (or more common) opposing opinion, is certainly a significant indication.

[*Latin ed. p. 397*]

PARISIAN. Number 397, concerning the erudition of P. Ballerini, Editor of the Acts of the Holy See, and an advocate for actresses, but now to be considered among matters of antiquity. With these critical observations preceding, we now proceed to the positive interpretation of the text of Trent. I. Firstly, the law of Trent, chapter "Tametsi," although broad, obligates all baptized faithful who contract marriage in a place subject to the jurisdiction of Trent. For the Fathers of Trent use the most general term: "Those who otherwise... attempt to contract marriage, they render them incapable and annul such a contract." Therefore, only those are to be excepted who, from general principles of law or from a limitation expressly added by the Council of Trent itself at the end of the chapter, or from a special title proven elsewhere, are excepted. Hence, those who celebrate marriages among themselves who are not of the faith are certainly excepted, and even in mixed marriages of non-believers, unless some other impediment of disparity of cult prevents it; for, because of the individuality of the contract, the part exempted from the observance of the Tridentine form communicates its immunity with the other party contracting. For although this principle of communication of exemption because of the individuality of the contract may not be extended to other impediments, such as consanguinity, nevertheless the impediment of clandestinity, or the lack of the Tridentine form, is now certainly applied, unless some modification of this principle of mere positive law is to be considered, for example, in the declaration and statute of Leo XIII for the island of Malta. Furthermore, the only limitation added by the Council of Trent itself to its general sanction ("Those who otherwise...") is found in the final clause: "Lest these [so salutary precepts] deceive anyone," etc., where it prescribes to all Ordinaries that they publish it, and furthermore decrees that such a decree shall begin to have its force in each parish after thirty days. "This final clause of the Council of Trent was certainly observed in Paris, and no one doubts the full force of the chapter "Tametsi" in the parishes of the city of Paris. Nor can certain special titles of exemption be invoked there, as, for example, those by Benedict XIV...

[*Latin ed. p. 398*]

598 Decrees from the Council of Trent, pertaining to the Netherlands, or those granted by Leo XIII concerning the island of Melitensi, are in effect.

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Therefore, in Paris, the law of Trent remains in its unimpaired and complete force: "Those who act otherwise – the Holy Synod... renders them incapable, and such contracts are annulled." II. Furthermore, all those who are bound by the bond of Tametsi must celebrate the marriage before their own parish priest. Indeed, the Council of Trent, in the two sections of chapter Tametsi, where it explicitly discusses the essential form of the marriage celebration itself (and not of the announcements and the blessing of the marriage), does not add the words: "at least before the parish priest" or "in the presence of the parish priest," and the defender of the bond, H. S. C., seems to attribute great importance to this omission in his observations. However, it is undoubtedly understood that the word "own" is entirely implicit even in the passages cited. Cf. Sánchez I, chapter I, section III, number 2. For the Fathers of the Council of Trent speak explicitly of the "own" parish priest, both in the preceding sections (regarding marriage announcements) and in the subsequent sections (regarding the blessing of the marriage), but from the entire context, it is always understood to be the same parish priest; hence, in the middle section of chapter Tametsi, the words of the Council of Trent must also be understood to refer to the "own" parish priest. Moreover, if the word "own" were not to be added, it would logically follow that any true parish priest could assist in the marriages of the faithful, cf. Sánchez I, chapter, number 1. But the defender of the bond certainly does not admit this conclusion; for it would be a completely new and unheard-of conclusion, and one that manifestly contradicts the following words of the Council of Trent: "If any parish priest or other priest, whether regular or secular, should dare to join or bless in marriage the betrothed of another parish without the permission of their parish priest, let him remain suspended by law for as long as he is not absolved by the Ordinary of that parish, who should have been present at the marriage or who was to have received the blessing." Hence, all others are excluded under the most serious penalties, except for the designated parish priest, who is the one who must assist or be present.

[*Latin ed. p. 399*]

PARISIAN. 399, and also with that from whom the blessing is to be received; but in the immediately preceding text, the Council of Trent explicitly states: "The blessing must be given by the proper parish priest." Therefore, given the perfect equivalence established by the very Council of Trent between the parish priest assisting and the parish priest giving the blessing (who must be present at the marriage or from whom the blessing is to be received), the assisting parish priest also must be the proper one. Finally, if one considers only the words of the parish priest in the matter of marriage and the context, and if one takes into account the purpose of the Church in establishing a new decree and the practice already in force before the Council of Trent, then the parish priest of the contracting parties

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(without their own parish priest) is uniquely the proper parish priest. On this point, Father Tarquini rightly notes in his commentary (in the year 1868): "Everyone understands that the Council of Trent did not simply order that marriage be celebrated before a parish priest, but before the *proper* parish priest." This interpretation of the text of Trent is supported by the common opinion of doctors, and there has never been a serious controversy about it. Cf. Sánchez and Gasparri, I, chapter. Therefore, if the defender of the bond insists on the omission of the word "proper" and draws false conclusions, he proves nothing. The proper parish priest of the contracting parties, according to the reasoning of Tametsi, is he in whose parish at least one of the contracting parties has either a true domicile or a quasi-domicile, or an actual residence, if it is a matter of a vagrant. Indeed, according to the intention of the Fathers of Trent, the proper parish priest, at least in relation to the celebration of marriage, is not the parish priest of the origin. For if simply the term "proper parish priest" is used, it is understood to mean the parish priest of the domicile. If the sacred canons also intend to include the parish priest of the origin, they expressly declare it, as happens in the case of sacred ordination. Therefore, the doctors commonly, based on these principles, consider the proper parish priest, when it comes to marriage, to be the one in whose parish the domicile is established. This is also the opinion of the Sacred Congregation, in its decree of November 18, 1702, in the case of Modena.

[*Latin ed. p. 400*]

400. From the decrees of the Council of Trent, it is clear. Thus, Pope Benedict XIV rightly argues in *Institutiones Ecclésiasticæ*, 33, n. 6. To whom, indeed, is a domicile rightfully attributed, and to whom is a quasi-domicile attributed, as a title, by reason of which one becomes the proper pastor of a parish, at least in order to validly and licitly assist in the celebration of marriage? Nowhere in the law is that particular restriction found, by which the Bishop, because of the true domicile, and not a quasi-domicile, becomes the proper or competent Bishop for the ordination, even in the case of marriage. Therefore, the authors are entirely agreed that one becomes a diocesan or parishioner, or is subjected to a Bishop or pastor as his own, not only because of a true domicile, but also because of a quasi-domicile. This, without doubt, applies to the solemnization of marriage. Therefore, if the Glossa in the ancient law of the Decretals repeatedly teaches this principle: "A diocesan of a certain place, unless something else is added, is to be understood as a diocesan of that domicile," then, undoubtedly, the Fathers of Trent understood the words in this way, even when speaking of a proper pastor, according to the common way of speaking of the schools and doctors. Cf. Sánchez, * /. c. I. III, disp. 23, n. 7; Laurin, * /. c. p. 219, sq. Finally, from ancient times, it has been accepted that those who are merely residing in a place can become parishioners of a certain pastor, or

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be subject to him as their own. Cf., for example, the Glossa ad cap. 20, X. de foro com. II, 2, v. "Or of the domicile." But this principle has never been extended to those who are traveling or guests. Cf. Sánchez, * /. c. I. III. disp. 18, n. 3 sq., disp. 25, n. 8 sq.; Reiffenstuel, * /. IV. I. 3, n. 86, 94; Benedict XIV, *Institutiones Ecclésiasticæ*, 33, n. 10; Laurin, * /. c. p. 206. For he who has a true domicile or a quasi-domicile in a certain parish, and who is merely staying in another parish by a simple sojourn, is in no way a vagrant or wanderer, but is considered a traveler or guest. In this doctrine, the writers are truly unanimous, as is evident from the doctors cited above. Therefore, the following conclusion undoubtedly follows: one becomes a proper member of a parish, in order to celebrate marriage, only by three titles: either by a true domicile or by a quasi-domicile.

[*Latin ed. p. 401*]

PARISIAN. The fourth title [of competence] is not granted, either from a fixed domicile or from a true, albeit temporary, residence of the contracting parties. However, according to the opinion of the defenders of the bond, in the case of Henry and G-erman, a certain fourth title of competence to provide assistance in parishes seems to exist. For they claim that certain contracting parties, who, in their opinion, are not truly vagrants, maintain elsewhere a true, or at least a quasi-domicile, and are present in the parish in question only as guests and travelers; nevertheless, with regard to the celebration of marriage, they are equivalent to vagrants, and can validly celebrate marriage there before the parish priest by simple residence. But contrary to this opinion of the defenders of the bond, there is primarily the most serious presumption that vagrants are equated with travelers. For there is a manifest distinction between vagrants and travelers, admitted by all writers, especially in the matter of the celebration of marriage. Cf. Laurin, *J.C.*, p. 223 sq. Therefore, what the laws have established concerning vagrants, can only be extended to travelers arbitrarily. Hence, Father Tarquini rightly argues in his written opinion of 1868: "For if the laws require the condition of being a vagrant in order for a traveler to choose a parish, this demonstrates that he who is not a vagrant does not have this faculty. For he who is not a vagrant, together with his domicile, has his own parish, before whom, although he is not bound by the penalty of nullity to enter into marriage, even if he is not in a place where the Tridentine decree is in force, he is nevertheless bound by the law of discipline (which has always been in force in the Church); but a vagrant, having no domicile, has no parish (proper to him from his domicile), and therefore no law which compels him to enter into marriage before [a parish priest] who does not exist [in his domicile]. Therefore, Kugler rightly refers to the common opinion (De matr. 294), writing: "Travelers contract validly in a place where the Tridentine decree is in force, without the presence of a parish priest and witnesses, even if in their own diocese the Tridentine decree was not in

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force; indeed, in this case, travelers..."

[*Latin ed. p. 402*]

402 FROM THE DECREE OF THE COUNCIL: No one who does not wish to establish a domicile or quasi-domicile in a place where the Council is held shall contract marriage before the local parish priest and witnesses, but shall act not only illicitly, but also invalidly, because he shall not contract marriage before his own parish priest. Pignat., vol. 5, Cons. 79, n. 33 [joined with n. 32 and especially n. 34, where Pignatellus adds: "Therefore, from this point, it must be understood that this kind of marriage (i.e., of those who are traveling), because by going to a place where they do not have their own parish priest, they render themselves incapable of contracting; for they make it impossible for themselves to observe the form prescribed by the Council in the place where the marriage is contracted, and therefore | they contract nullily, according to the Doctors cited above], since, as has been said, the parish priest only makes a domicile or quasi-domicile." Thus far, P. Tarquini, I. c. Another argument can be raised against the defenders of the validity of the marriage from the very purpose of the Council of Trent. For the Fathers of Trent did not intend to entrust any parish priest, but a certain, determined one, with the care and guardianship of marriage with regard to announcements, investigations of impediments, celebration, and blessing. This is entrusted to many people, and while it is indeed carried out collegially, it is also neglected collegially. Hence, even those who are traveling, according to a more sound opinion, can validly contract marriage only before the parish priest of their actual place of residence, as rightly held by Benedict XIV, Inst. 33, n. 10, and others, e.g., Card. D'Annibale, Mansella, Santi, Lehmkuhl, Pirhing, Schmalzgrueber. If Sánchez, I. c., I. III, disp. 25, n. 11 sq., and others hold a contrary opinion, they rely on very weak arguments, if indeed they ever contend that any parish priest in the world is competent to assist in the marriages of those who are traveling. For the reason sought from confession is not relevant; because certainly no one who is traveling will be able to confess to any parish priest, unless he is actually in that foreign parish, or the parish priest of that foreign parish is present in the parish of his actual residence.

[*Latin ed. p. 403*]

PARISIAN. 403. The wandering individual; furthermore, the power to dispense with confessions, according to the current discipline regarding the sacrament of penance, is to be judged; and this practice is by no means to be transferred to other sacraments. Moreover, if it is said that there is no reason why this parish priest should assist rather than that one, this is a rather weak argument; for there is a clear reason why the actual parish priest of the wandering individual should assist. Indeed, this very actual presence is already the best reason why that parish priest should be pre-

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ferred to others. For, as has been shown above, the authors generally admit that someone can become a true parishioner or subject to a parish priest, either by true domicile, or by quasi-domicile, or by actual residence, in the case of wandering individuals. Cf. Laurin, *l.c.*, p. 223 sq. Therefore, since the words of the Council of Trent regarding the proper parish priest are perfectly clear, there is no reason why, simultaneously in fact (i.e., not merely in potentiality, if wandering individuals migrate to another parish), all the parish priests of the entire world should be considered competent to assist. Nor should it be said that a parish priest of pilgrims can validly assist in the marriages of his own parishioners in a foreign parish. This is certainly true; but the reason is clearly different. For that parish priest of pilgrims only assists in the marriages of those who are actually and truly his subjects; but the parish priest of a foreign parish, with regard to a wandering individual residing there, is not truly, in fact, but rather only potentially, the proper parish priest of that individual. Finally, if the exercise of the sacred ministry in a foreign parish, even with regard to one's own few subjects in permitted cases, has something objectionable about it, then it follows all the more strongly if the right to exercise that ministry is deservedly denied, and furthermore, if all the parish priests of the entire world are given the power to intervene in the matter of the marriage of two wandering individuals, which is clearly better cared for by the parish priest of the place. What more ridiculous thing can be imagined than if someone were to admit that all the parish priests of a large diocese, gathered in a diocesan synod, are competent to assist in the marriage of two wandering individuals, which is fortuitously celebrated in the episcopal city, so that room is made for intervention among the nearly 900 parish priests, for example, in the Archdiocese of Cologne?

[*Latin ed. p. 404*]

Art. 404 FROM THE DECREE OF THE COUNCIL. The distinction introduced by Gasparri, I, chapter 917, which Sánchez approves, has not been solidly proven in this matter, unless the vagrant has a certain, stable residence in the parish. But this distinction between a simple residence and a stable residence, which does not amount to a quasi-domicile, has no basis whatsoever in written law or in the decisions of the Holy See, or in custom, but is invented by private judgment. Furthermore, this stable residence is a notion so vague that, in the very serious matter of the validity of marriage, everything ultimately depends on a subjective estimation, which does not depend on a clear and obvious norm. Is a period of months required, and is that sufficient for a stable residence, or is a certain intention of remaining for more than three months required, as is necessary for acquiring a quasi-domicile, where an intention of remaining for more than six months is required? All of these things are undefined, but quite vague. Therefore, the opinion of Benedict XIV is better, in which the decision depends on

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a simple and easily knowable fact, namely, the actual residence of the vagrant in a particular parish. With these premises, the argument can now be restated as follows. If there are solid reasons why vagrants alone should be admitted, excluding all other parishes except the parish of their actual residence, then there is a very strong reason for excluding other parishes of actual residence as being competent, if someone has a proper parish by reason of his true domicile. For that parish priest certainly remains and is the proper parish priest, even if the parishioner departs as a pilgrim to other regions; but all of his competence becomes completely illusory if not only another parish priest, perhaps from a true domicile or a quasi-domicile elsewhere, is added, but furthermore, all the parish priests of the entire Catholic world become competent, in the parish of which the betrothed happens to reside. Furthermore, a third reason must be raised against the defenders of the bond, derived from the very genuine text of the interpretation of the Council of Trent. The Fathers of Trent, in chapter 1, decree: "I. Those who are married otherwise than in the presence of the parish priest or minister of that parish..."

[*Latin ed. p. 405*]

"PARISIEN". 405 The Ordinary will see to it that a marriage is contracted with the license and with two or three witnesses; II. The Holy Synod declares that those [persons] are entirely incapable of contracting marriage, and that such contracts are void and null, as it declares them to be void by the present decree and annuls them. Indeed, no defender of the bond will be able to contradict the Holy See, if he only contends that in the second part of the cited text of Trent (II. The Holy Synod, etc.), two distinct members must be distinguished: 1) those [persons] are declared incapable of contracting marriage; 2) such contracts are annulled, in which each has a distinct meaning. For it is not permissible in the ecumenical Council itself to admit such a tautology and useless repetition, as if in both members, the same thing is plainly said in other words. If the lawyer for the defendant seems to maintain that both members of the second part relate to each other as antecedent and consequent (rendering [persons] incapable, and therefore annulling the contract), then he has indeed attributed a truly reasonable meaning to those words; for it is a legitimate consequence that a contract celebrated has been null, if the contracting parties were incapable of validly contracting. Cf. Schmalzgr., Dissertation, preface, no. 7071. But it may be noted that the Fathers of Trent did not expressly state that the two members of the second part are to be understood as antecedent and consequent, but rather as two coordinated sentences, not subordinate. Therefore, the lawyer for the defendant does not seem to have fully grasped the meaning of the words of the text of Trent. This genuine meaning seems easily to be understood, if one has in mind the doctrine of theologians and canonists, that the Church can invalidate a marriage in two ways: either

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by directly rendering the marriage contract completely null, or juridically ineffective in producing the marriage bond, or indirectly by rendering the contracting parties incapable, e.g., consanguineous of certain degrees. This doctrine is abundantly approved by Sánchez, I, c. I, III, cap. 4, no. 1 sq., and finally, no. 5 applies these words to our text of Trent: "Second conclusion. Trid. Sess. 25, cap. 1."

[*Latin ed. p. 406*]

406 From the decree of the Council of Trent concerning marriages contracted *de facto*, it is established that clandestine marriages are rendered invalid in both ways. It is clear that the indirect and mediate invalidation, which incapacitates persons, is contained in these words: "It makes them incapable of contracting marriage in this way"; while the direct invalidation, which annuls clandestine contracts, is found in these words: "It declares such contracts to be invalid and null, as it makes them invalid by the present decree." From this doctrine, which Sanchez has accepted regarding the double form of invalidation, it is easily understood why the Fathers of Trent did not subordinate the two parts of the second canon to each other as antecedent and consequent, but rather coordinated them. But at the same time, from these same words of the Council of Trent, it is clear that the Church, by establishing a new form, has not granted itself the power to alter, contrary to the very words of the Council of Trent, the essential nature of the sacrament of marriage, as Sanchez I, c., cap. 4; Gasparri I, c., n. 268, 883, and others, abundantly demonstrate. Nor does the Church, in adopting this double form of invalidation, even of the contract itself (not merely the incapacitation of the person), incur that difficulty: "Since a man, with full freedom of will, has complete dominion over his own actions, the Church lacks direct and immediate power over human actions." For Sanchez correctly responds in I, c., n. 10: "Although... the Church does not have power over human actions, as far as the substance of the act elicited is concerned, that is, to compel the will to will or not to will, it does have power as far as the legitimacy of those actions is concerned, since it can, for just reasons, decree that such an act be legitimate and valid." Therefore, the Church cannot, by its own power, completely prevent a certain marital consent, naturally given, from lacking its natural value; for it cannot prevent the contracting parties from expressing, through an act of the intellect, in which no error concerning the person intervenes, and through a completely free act of the will, their internal act, by an external and visible sign; indeed, that consent, which is naturally valid, but juridically ineffective, is the root which is healed by the Church, if the favor of the healing of the marriage is granted to that root. Cf. Feije, *loco cit.*, numbers 82, 761, 766. But the

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Church does not prevent that...

[*Latin ed. p. 407*]

PARISIAN. That natural act, though intrinsically valid, will lack juridical efficacy in producing a valid matrimonial bond, because conditions prescribed by ecclesiastical law are lacking, namely, in the understanding of the contracting party, the absence of accidental error concerning a condition of the other party; in the will, full freedom, which, indeed, is not required solely by natural law (for, according to the opinion of those who hold that only ecclesiastical law can render a marriage invalid through a condition); finally, the defect of the *forma* of Trent. This *forma*, certainly, contains many elements beyond the natural manifestation of consent. Suarez, *De leg.* I. V. cap. 19, n. 4, holds the same doctrine concerning the meaning of the text of Trent, but presents it in a different manner, and therefore clarifies it not lightly: "An act can be rendered invalid in two ways: first, directly, by establishing and prescribing something; and secondly, indirectly, by prohibiting and invalidating; thus, it is evident in the law that prescribes a form for an act, that the act performed without such a form is invalidated. The best example is found in the decree of the Council of Trent, Session 24, concerning the marriage contract; for, it established that the contract must be performed in the presence of a parish priest and two witnesses, and otherwise declared it invalid. Another way of directly invalidating an act is through a prohibitive act, with sufficient words to invalidate it; such is the law prohibiting marriage between those who are related by blood up to the fourth *gradum*. Some add a third way of invalidating an act through the inability of the person, as theologians often explain the impediments to marriage and religious life, and as the Council of Trent expressly declared in the decree issued against clandestine marriages, that the act is invalid from itself. But this method, although true, is included in the two preceding ones, and cannot be separated from them, if they are properly understood. For whenever the law invalidates an act, it renders the will of the subject ineffective and powerless to contract, or to transfer, or to acquire ownership, or something similar, and this is to render the act incapable of contracting, or to contract in such a way. Sometimes, the law..."

[*Latin ed. p. 408*]

408. The Council of Trent, in its decrees, simply renders a person incapable of performing a certain act, as when it renders a cleric or a religious person incapable of contracting marriage; sometimes it renders a person incapable only with respect to certain circumstances, such as contracting marriage with a blood relative or giving something to outsiders; sometimes it renders a person incapable only in a specific way, as the Council of Trent stated in the aforementioned decree. And in all these cases, the act itself

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is rendered invalid, and the consent of the will is rendered ineffective to produce that effect. Thus, and in no other way, a person becomes incapable of producing that effect. For just as human acts are perfected by the will, so the incapacity of a person with respect to such acts must be considered, to the extent that their act is rendered ineffective. And conversely, an act cannot be rendered invalid, nor the will rendered ineffective, without the person thereby being rendered incapable to a corresponding extent, as has been said. More recent writers are not unacquainted with this doctrine. Thus, for example, Lehmkuhl, *Theologia Moralis*, vol. II, n. 773, writes: "The clandestine marriage, which the Council of Trent declared to be a new species of impediment after a long discussion and struggle, is a complete impediment. For while other laws that invalidate marriage directly affect the contracting parties, and their consent is rendered ineffective only indirectly or because the contracting parties are thereby rendered incapable, with the law concerning clandestine marriages, the consent itself, or the external form of consent, is directly affected, and by the lack of legal consent, the contracting parties themselves become incapable." Laurin, I, c., p. 225 sq., insists on the distinction between the form prescribed by the Council of Trent and the capacity of the person. He also rightly points out that both questions are intimately connected with the question of true domicile or quasi-domicile, so that it may be determined who is the proper pastor of the contracting parties, and who is bound by the Tridentine form, either by local law or by law at least personally (or by both), and thus is either incapable of the act or directly incapable of performing it. From these discussions, it is easily deduced who is...

[*Latin ed. p. 409*]

PARISIAN. The genuine meaning of the text of Trent, and what is true and false in the assertions of the defenders of the indissolubility of marriage: I certainly do not intend to burden myself with frivolous or absurd subtleties regarding all their distinctions. Therefore, in the alleged text of the Council of Trent, it is clearly evident, according to the very grammatical construction and the obvious meaning of the words, that in both the first and second parts, it speaks of the same persons: "Those who act otherwise—they render them incapable and annul [the marriage]." Furthermore, it is evident that both members of the second part refer to all persons who are included in the first part, i.e., whoever is bound by the Trent form for any reason and does not observe it, both because of the incapacity of the person and because of the direct invalidation of the act, render the marriage utterly null. Therefore, the defender of the indissolubility of marriage, S. C. C., seems to be entirely mistaken if he applies, from the second part, sometimes only the first member, sometimes only the second member, and sometimes both, according to the diversity of persons contained in the first part. For the words of the Council of

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Trent do not contain even a trace of such a distinction, but are connected in a cumulative manner: "They render them incapable and annul [the marriage]." Moreover, as has been demonstrated above with Sanchez and others, that second part refers to each and every one who is bound by the Trent form, because the Fathers of Trent intended to invalidate clandestine marriages in two ways, namely, through the incapacity of the person and through the direct invalidation of the act. This twofold invalidation, according to the defender of the indissolubility of marriage, S. C. C., would in many cases be entirely lacking; for, according to his opinion, sometimes only the first member, sometimes only the second member, and sometimes both members of the second part are to be applied; contrary to what Sanchez writes in chapter 1: "He did this deliberately, invalidating in both ways, so that he might clearly signify to all how much the Church detests clandestine marriages." It is not difficult to indicate the cause of the fallacy in the defender's argument. For, although the defender correctly distinguishes between the law that directly...

[*Latin ed. p. 410*]

410 ^ The Council of Trent does not correctly teach that the distinction between a person rendered incapable and a law that directly invalidates an act coincides with the distinction between a personal law and a local law. For, certainly, a vagrant, who is not bound by a personal law to contract marriage, if he wishes to celebrate a marriage in a parish subject to the jurisdiction of the head of Tamets, is bound by the local law, and if he enters into marriage there in a manner other than before his own parish priest, who is his proper parish priest, and two witnesses, the Holy Council of Trent rendered him incapable and simultaneously directly invalidated his marriage contract, as is evident from the words of the Council of Trent. Likewise, he who, in order to circumvent the law of Trent, moves to a parish exempt from the jurisdiction of the head of Tamets and celebrates a marriage there before the local priest and two witnesses, but still maintains his domicile in the parish subject to the law of Trent, is certainly not bound by any local law, but only by a personal law, and therefore, once again, the second part of the text of Trent is verified solely by the personal law: "He renders them incapable and invalidates such a contract." The same holds true if someone is bound by both local and personal law. Therefore, the defender of the bond introduces a distinction and separability where there is a perfect conjunction, namely, in the second part ("He renders them incapable and invalidates such contracts"); whereas, where there is a distinction, he admits identity; for the law of Trent, as a personal law, cannot be confused with a law that simply directly incapacitates a person, nor does the law of Trent, as a local law, coincide with a law that simply invalidates an act. If the defender of the marriage introduced a poorly founded distinction in explaining the second part, he was equally

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unsuccessful in his interpretation of the first part of the text of Trent. For, as I have already demonstrated above in those texts of the Council of Trent ("Or at least before the parish priest and two or three witnesses"; He who does otherwise than in the presence of the parish priest... and two or three witnesses), the word "supple" is certainly the correct one; and it is equally certain that someone is the proper parish priest of the contracting parties either by the simple title of residence in the case of vagrants. This assertion, as I have already said...

[*Latin ed. p. 411*]

PARIS. 411. And furthermore, what has been demonstrated above appears not to require further proof with new arguments. Nor does it seem excessive to refute the arguments of the defender of the bond, for since they primarily rely on introducing that new (and refuted) distinction, and on eliminating the word "proprio" (certainly by supplementing it), the rest are of lesser importance and can be dealt with more briefly. Moreover, the learned defender argues in S. C. C. n. 17: "The epithet 'proprio' indicates a relationship not to the act, but to the person; therefore, this assertion is not in conformity with the words of the Council of Trent; for the very act of celebrating the marriage must be performed before the 'proprio' priest, otherwise it is invalid; therefore, the 'proprio' priest certainly has a relationship to the act." Furthermore, the Council adds (in order to remain within the defender's distinction), "and such contracts (i.e., without a 'proprio' priest) are declared null and void." But the Council says, in addition to all that is contained in the first part (Qui aliter), that the Holy Synod renders those who proceed otherwise (i.e., without a 'proprio' priest, cf. the words of Suarez above) entirely incapable of contracting marriage; but by reason of local law, it certainly applies only to the first part; therefore, even for contracting marriage in this way, it is invalid. The defender continues in n. 18: "Therefore, how can this necessity of a 'proprio' priest arise, which obliges Henrica? Perhaps you will say from the London domicile. But it is unheard of for a law to exercise its force in a place where it does not prevail, for it would be more in effect than in cause, etc." I leave these axioms to the philosophers; certainly, there is no lack of a canonical response to the questions and difficulties raised. Henrica is bound by the law of Trent, fully in force in Paris, even for her, at least as a local law, or briefly, by the Parisian local law. Those who proceed otherwise than in the presence of the 'proprio' priest... are rendered... incapable, etc. What the defender adds relies on a confusion between the London law and the London domicile. Indeed, Henrica is not bound by the London law, whether it be personal or local; for the law of Trent has never been promulgated there; hence, that

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London law, which does not exist at all, much less exercises its force.

[*Latin ed. p. 412*]

412 From the decree of the Council, a local or parochial law can be exercised in Paris. But it does not occur to anyone to derive an obligation for Henry from some London law, by which Paris is obliged to celebrate marriage in the Tridentine form; this obligation for Henry is derived from the law of Paris, which prescribes that Henry must celebrate the marriage before his own parish priest. This is concerning the law. If, then, the species of the case is to be defined, to which the law is to be applied, it is certainly true that, from the fact of Henry's London domicile, the parish priest properly required by the law of Paris is accurately determined. Therefore, Henry's London domicile contributes to determining the species of the case of the law of Paris, but it does not constitute a certain London law effective in Paris. Hence, the following assertion of the defender, no. 19, has already been refuted: "See the absurdity: This law, which the Holy Synod expressly forbids to have its force in parishes in which it is not published, would not even have its force there, but another, more effective force, by virtue of which the faithful with domicile or quasi-domicile in parishes exempt from the decree of Trent would be more strictly bound than the inhabitants of the place where it is in force. Although." But these things are not to the point. For the law of London, not being published, exerts no force in Paris, but only the law of Paris, and that with a much less effective or strict force. For an Italian, who sets out for Paris and retains his Italian domicile, and does not acquire a true domicile or quasi-domicile in Paris, is not made a vagrant, and is certainly in no worse condition. If, therefore, inconveniences arise, let those traveling spouses bear them themselves, and not accuse the laws of the Church. For the laws of the Church are given for matters that commonly occur, not for the convenience of traveling Englishmen, who may happen to celebrate marriages while traveling. Hence, Pignatelli rightly wrote in I. c. concerning these traveling people, who come to a place, cap. Tametsi: "Such a marriage is null, of those who, by going to a place where they do not have their own parish priest, render themselves incapable of contracting: for they make it impossible for themselves to observe the form prescribed by the Council, in the place where they contract."

[*Latin ed. p. 413*]

PARIS. 413, No. 20. The defender resorts to the argument that parish priests, in cases where, as stated in chapter Tametsi, it has not been publicly announced, cannot, by any law, grant permission to another priest to assist at the celebration of such a marriage; that is, neither by the law of Trent, which does not grant them such authority within their own parish, nor by the law of the Decretals, which seems to require the assistance of the parish priest for a valid celebration of marriage, and not merely for a licit one. This

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argument is quite dangerous for the defender of the validity; for he does not seem to have considered that he has adopted a proof which Labrunie commonly rejected, in order to support Carrière's generally refuted theory. I have already presented, above, the refutation of this proof, as given by Van de Burgt, and previously, Father Tarquini, in his opinion (in 1868), refuted the same argument. Furthermore, it is surprising that the defender seems to deny only the possibility of delegation by the parish priest, and not the personal assistance of the parish priest. But if the parish priest (of London) can assist in a case that concerns him personally (in Paris), he can also assist through another priest delegated by him. For one can do through another what one can do through oneself, unless it is expressly prohibited by law; but there is no special prohibition of delegation in the common law, or in chapter Tametsi; indeed, there, delegation is expressly permitted again and again; therefore, the parish priest of London can delegate, provided he observes the conditions prescribed by the law of Trent, e.g., regarding the qualifications of the delegate. Therefore, if the defender admits that the parish priest himself has the right, by his own authority, to personally assist at marriages in Paris, his denial of delegation lacks all foundation. If, moreover, he denies to the parish priest himself the right to delegate, he teaches an equally improbable opinion. For the parish priest (of London), in the case where Henry resided in the parish of London (at least until the celebration of the marriage), was the proper parish priest of both Henry and Henrietta, of whose confessions he could have heard in Paris. And according to the law of Trent, in Paris, the proper parish priest of the contracting parties can and must either personally assist at the marriage.

[*Latin ed. p. 414*]

414 FROM THE DECREE OF THE COUNCIL, or by a priest delegated by him. And indeed, the defender of the bond may rightly raise the question: would that London parish priest, if he had personally been present in Paris for the marriage of Henrietta, have been validly present? This is scarcely a matter of doubt. But by what title? No other title can be assigned than that of the parish priest proper, based on Henrietta's true domicile in London. Finally, as P. Tarquini and Van de Burgt have already noted, the parish priests were already competent for this delegation according to ancient law, and even now, the practice prevails in England that the faithful cannot celebrate marriages before any Catholic parish priest. These matters, which are later discussed in numbers 21 and following, concerning the sad condition of those foreign contracting parties, about whom we are speaking, do not have canonical force, because, as I have already demonstrated above, that sad condition, if it were to be verified in a particular case, is not a reason for arbitrarily interpreting and applying ecclesiastical laws. But that sad condition can scarcely be imagined in ordinary practice. For most often, one party will be from that region and will also have some domicile there,

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or perhaps one of the contracting parties is actually a vagrant, or one of the betrothed, a foreign resident, has already acquired a quasi-domicile in the parish – and all difficulty is removed. If both parties retain their domicile, in our time, within a few days or a few weeks, for the sake of the ease of correspondence (e.g., if there had been a simple correspondence between the Parisian and London states), a delegation can be written. And if there is danger in delay, a delegation can be requested and given by telegraph. Therefore, a certain practical difficulty can only arise from local law, if, for example, two English people residing in England wished to contract marriage in inaccessible places in Bolivia or the Philippine Islands, where the head of Tametsi is in force. But the same difficulty exists from personal law for two Parisian betrothed who wish to celebrate their marriage in the extreme Sibi ria or in the interior of Africa. Nevertheless, the Church, for the sake of those who are traveling,

[*Latin ed. p. 415*]

PARISIAN. The inhabitants of Risia have, up to this point, exercised personal jurisdiction. Although they have not abolished it, it is therefore not surprising that they are unwilling to relinquish the perfect local jurisdiction of that same chapter of Trent. Hence, the defenders will apply to themselves the words previously quoted from Pignatello. Finally, the defender of the bond, in numbers 22 and 23, invokes the letter of Pius VI to the Bishops of Lucion, in the year 1793, in which it is declared that the faithful are exempt from the obligation of using their own parish priest in celebrating marriages, and moreover, he transcribes the decree of the Sacred Congregation, by which it is declared that it is permissible to validly and licitly celebrate with two witnesses without the presence of the parish priest, if, for a period of one month, it is not safe to have access to him. But this argument also lacks a solid foundation. For I have already demonstrated that such a difficulty of access, or rather, delegation, in fact, does not exist at all, and certainly did not exist in the case of Henry, if the bride or groom, or the Parisian priest, had used even moderate diligence. Furthermore, the defender of the bond is mistaken in the law; for such an access not being safe only exempts from the obligation of using one's own parish priest if that impossibility of safe access or delegation is common, not particular, e.g., to only two betrothed couples. Cf. Lehmkuhl, Theol. mor. vol. II, n. 784. Finally, the defender does not seem to consider the evidence of those documents to be sufficient. For if these travelers are excused from using their own parish priest, either by themselves or through a delegate, would such travelers validly contract a marriage before only two witnesses, as in certain missions? Cf. S. C. de Prop. F. 2 July 1827; Gasparri I, c., n. 960. For in the place of celebration, they do not have a truly proper parish priest; therefore, if another parish priest is present in the place, he should be used commendably with regard to the sacred functions, but would contribute

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nothing to the validity of the marriage; for he would be a non-proper parish priest. But the defender of the marriage, on the other hand, obliges those betrothed couples to use the actual parish priest under pain of nullity.

[*Latin ed. p. 416*]

416 From the reasoning of the Council, but that [parochus] is the proper parochus of wandering betrothed couples, not of traveling witnesses. But traveling witnesses are not wandering [people]. Therefore, the argument of the defender does not cohere with his thesis or conclusion. The defender also draws support for his position from the decree of Urban VIII, August 14, 1627. But that decree concerns traveling [people] who are bound by marriage, whether they remain in their own parish of domicile or travel to a parish exempt from the law of Trent without acquiring domicile. Those betrothed are certainly bound even in another parish by personal obligation; but in our case, we are dealing with a betrothed woman exempt from the law of Trent and traveling to a parish subject to the local authority, where she is bound only by local law. But this distinction between local and personal law differs greatly from the famous distinction made by the defender of the bond, which he detected in the text of Trent, and of which Urban VIII himself does not speak a word. I omit the case decided by the Paris court on August 25, 1873, by the Holy Sacred Congregation, from which even the defender himself, in point 27, does not gather a distinct argument, but immediately proceeds by opposition to wandering [people], as if the Council of Trent had not assigned a certain parochus to wandering [people], and then he applies his distinction again, as if the Council of Trent, if wandering [people] were to contract marriage without the form of Trent in a parish subject to the local authority, would only directly invalidate them by reason of the contract, and not by reason of their person. But this last assertion is contrary to the text of Trent: "Those who render them invalid, and who annul such contracts." Furthermore, wandering [people] also have a parochus assigned to them, that is, according to a more sound opinion, not any [parochus], but the parochus of simple residence. Cf. Council of Trent, Session XXIV, chapter 7, on the reform of marriage; reported in the Neapolitan causes, 3 Tui, 1734. Indeed, even if greater freedom were granted to wandering [people], it is wrongly inferred from this in favor of traveling [people]; for wandering [people] and traveling [people] are not equivalent in law.

[*Latin ed. p. 417*]

PARIS. 417 If I have considered it necessary to contradict, up to this point, the excellent defender of the bond of the Sacred Congregation of the Council, it is only with great reluctance, due to the evidence of facts and law; but it is easier to agree with those who, in numbers 32 and 35, write in favor of the matrimonial bond, according to their conscience. It is most

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regrettable that, due to canonical formalities not observed, the lawyers of Paris are given the opportunity to challenge the validity of marriages celebrated many years ago. This observation is all the more justified, because even now, the complaint, which was brought forward more than 30 years ago, in 1868, in a similar case, and reported in the letter of the Apostolic Nuncio of Paris, concerning the insufficient care of certain parish priests in examining the canonical conditions of domicile, does not yet seem to lack all foundation, and is too strongly supported by testimonies regarding the fulfillment of the conditions of civil law concerning domicile. Therefore, it would not be surprising if the most pious defender of the bond of the Sacred Congregation, in so serious a matter, were to give one last effort, and in the end, attempt to uphold the bond of the holy marriage. He himself, perhaps, due to his singular sagacity and experience, might find a flaw in the argument of this opinion, or a neglected distinction in the text of the Council of Trent, or might demonstrate the vagueness or quasi-domicile of the Parisian residence of Henriette, with new facts presented, for example, citing the Parisian custom alleged in the Parisian case of 1868. In this matter, one could appeal to the most serious authority of Cardinal Morlot, the Archbishop of Paris at that time, who considered that marriage, examined in 1868, to be entirely valid. Instead of Coronidis, the defender of the Sacred Congregation alleges what the defender of the Parisian Court expounds at length in favor of the validity of the marriage contracted by Henriette. But there, many words are presented, which are not questioned by anyone, nor do they have probative force. Certainly, it is certain that [the canon] has the force of local and personal law; it is also certain that Henriette, in this case, was bound only by local law, because [the canon] was in force in the parish of London, where Henriette was truly and solely domiciled at the time of the marriage.

[*Latin ed. p. 418*]

418 FROM the decrees of the Council, it does not flourish in any way. But from these most certain premises, it derives a false conclusion through false intermediate terms. For that local law, namely, the law of Trent, insofar as it is in force in Paris, undoubtedly obligated Henrietta to celebrate the marriage before her own parish priest in Paris, as the defender of Paris openly admits and manifestly follows from the general words of chapter [omitted], "Although... the Holy Synod renders such marriages invalid and annuls such contracts," in the final clause concerning promulgation in each parish. If the defender of Paris adds the minor premise to the greater premise of his syllogism: "But Henrietta contracted marriage in Paris before her own parish priest, who was there the parish priest of Henrietta's simple residence," he clearly errs. For he assumes a completely false notion of a "proper" parish priest as a term of proof, and quite arbitrarily equates peregrines [travelers] with vagi [vagrants]. Indeed, a proper parish priest

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is considered either by the true domicile, or by quasi-domicile, or by vagrancy; the fourth title is not granted. But of the three legitimate titles, not one was verified in the parish priest actually present, while the fourth title rests on the false equation of vagrants and travelers, and on other false interpretations and distinctions of the text of Trent, which have already been refuted above. CONCLUSION. - Therefore, since the alleged facts have been certainly proven, and the only legal difficulty raised by the defenders of the marriage does not rest on probable arguments, but rather, the genuine and certain interpretation of the text of Trent favors the advocate for the plaintiff; finally, other methods also devised to defend the validity of this marriage have not been proven with solid reasons, but rather appear to be refuted by certain demonstrations: in this case, it is certain that the marriage is null. This conclusion, if it is to be reduced to a certain legitimate form and made more conformable to the double paragraph of the decree and in the manner of the doubts which were resolved on August 14, 1627, by the Sacred Congregation, and afterwards confirmed by Urban VIII, seems to be able to be presented in this manner:

[*Latin ed. p. 419*]

PARIS, 419 L. Question concerning the law in the abstract: Whether inhabitants, both male and female, of a parish, in which chapter [Tametsi] has not been promulgated, who, passing to a parish in which said chapter [Tametsi] has been promulgated, retain their domicile from which they departed, can validly contract marriage in that new parish, either 1. without any parish priest and witnesses, or 2. according to the custom of vagrants, at least before a simple parish priest and witnesses, or 3. whether, for the marriage to be validly celebrated there, they must necessarily contract it before the parish priest of their domicile retained, or a priest delegated by him, or before the parish priest of their true domicile or quasi-domicile acquired in the parish to which they have moved, observing also, in other respects, the Tridentine form concerning witnesses.

RESPONSE: Negatively to the first and second; affirmatively to the third.

II. PRACTICAL QUESTION: Whether the sentence of the Archdiocesan Court of Paris should be confirmed or rejected in this case?

RESPONSE: Affirmatively to the first part, negatively to the second.

With the foregoing premises, the purpose was to examine whether the sentence of the Archdiocesan Court of Paris should be confirmed or rejected in the case.

RESOLUTION. The Holy Congregation, after again discussing the matter on January 28, 1899, decided to respond: The sentence should be confirmed.

[*Latin ed. p. 420*]

420 FROM THE HOLY GENERAL COUNCIL OF BURGOS. August

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19, 1899. In the Cathedral Chapter of Burgos, a special right concerning the grant of Jubilation was established by a Bull of Gregory XV, dated September 7, 1621, by which it is decreed: "We reduce and regulate to thirty years the aforementioned forty years of residence required for obtaining the benefit of this Jubilation." Based on this constitution, Emmanuel Gonzalez Peña, Primicerius (Chief Priest) or Cantor (Choirmaster) of the Catholic Church, requested that the Chapter grant him the grant of Jubilation, which the Chapter refused, asserting that the Orator's service had not been continuous and sufficiently commendable. Therefore, the Canon Cantor appealed to the Apostolic See, stating the following: "Emmanuel Gonzalez Peña, holding the dignity of Primicerius or Cantor in the Metropolitan Church of Burgos in Spain, with due humility prostrates himself before Your Holiness, and declares: that he obtained the canonry of office, namely, the magistral canonry, from the year 1864, after a prior solemn concurrence, and that from the year 1878 he was appointed to the dignity which he now holds, by the benevolent nomination of the Holy See. Now, since in the aforementioned Metropolitan Church, those holding a canonry or benefice, after completing thirty years from the day of their possession of the dignity, enjoy or can enjoy the grant of Jubilation by apostolic permission, the Orator, afflicted by prolonged and moderate illness, implores Your Holiness with utmost earnestness to grant him the grant of Jubilation, so that he may be relieved of his duties and be able to receive and distribute [alms], since he is in need of all that is necessary for a sufficient and honest livelihood. SUMMARY OF THE CASE.

[*Latin ed. p. 421*]

"Furthermore, it must be added that the Orator, fulfilling the office of Rector of the Metropolitan Seminary for a period of twenty-two years without any endowment or salary, discharged his duties amidst numerous difficulties, whether due to the construction of the Seminary building, which he received in a dilapidated and almost uninhabitable state, or due to the adverse conditions in Hispania for several years, arising from the upheaval of public affairs. The aforementioned Rector, in addition to these duties, served as Orator from the year 1868 to 1890, and this, according to the judgment of his superiors, not without merit, both in the administration of the College and in the general organization of discipline, as they have declared on more than one occasion. Moreover, it should not be overlooked that from the year 1856 to the year 1878, he served as a professor, teaching scholastic philosophy and theology. Frequently, the Orator was also available to his superiors for matters concerning the diocese of Burgensis, in order to expedite affairs for the universal Church, including, among other things, in the preparation of the Syllabus and in preparing for the Vatican Council. Furthermore, for several years hence, witnesses attest that the Orator has been afflicted by poor health, and physicians, who habitually

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attended and attend him, and from whom he was compelled for several years to seek refuge in balnea, have testified to the great expenses incurred for the restoration of his health. Therefore, the Orator once again earnestly implores Your Holiness to grant him a dispensation, so that he may receive the benefits and distributions that he so desperately needs for his necessary and honorable support." The Bishop, expressing his own opinion and also the opinion of the Chapter, adds: "Having fulfilled the duty entrusted to me by the Most Reverend and Sacred Congregation of Councils concerning the supplementary prayers of Doctor Emmanuel Gonzalez Peña, Primicerius or Cantor of this Metropolitan Church, I have taken care to hear the Chapter on this matter, and I send herewith his response and his vote, together with a copy of the Apostolic Bull, which was granted by the Supreme Pontiff Gregory XV.

[*Latin ed. p. 422*]

422 FROM THE HOLY GENERAL COUNCIL, to this Metropolitan Chapter, in order to obtain the grace of jubilation, after having completed thirty years of service following the first residence in the same Church. "To those things which are explained in the attached document by the Chapter, it seemed good to me to add, and to inform Your Eminence and the Sacred Congregation of the Council, that the Orator has frequently been afflicted by poor health and that he is moreover highly deserving of commendation, considering his outstanding knowledge, piety, and gravity of character, as well as for the excellent services rendered and merits acquired, especially since for many years he has exercised with great merit and progress the functions of Professor of Philosophy and Sacred Theology, and Rector of this Metropolitan Seminary, in which, now that it has been raised to a Pontifical Institute, he is adorned and admirably fulfills the office of Prefect of Studies." The Chapter's vote was expressed as follows: "The Chapter of the Cathedral Church of Burgos, greatly desiring to satisfy the wishes of Your Eminence, so that, upon the request of the Primicerius of this Church, the Holy Congregation may grant the grace of jubilation, according to the petition made to the Holy Congregation concerning the Bull of jubilation granted to this Chapter by Gregory XV, humbly expressed its opinion, and indeed, regarding the first matter, it made clear what was done in the chapter meetings concerning this matter: 'The Primicerius of this Church, Dom. Emmanuel Gonzalez Peña, on May 2nd of the year 1896, requested the grace of jubilation, since, having completed thirty years of service after his first residence, he was able to obtain such grace according to the Indult of Gregory XV. The Chapter entrusted the matter to two Canons, who would give an account of the matter concerning said petition, and these, after examining the public records, responded concerning the aforementioned Dom. Emmanuel Gonzalez Peña, that after having obtained possession of the Magistral Canonry, on April 30th of

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the year 1864, he has served in this Church until the present time, but not continuously in all the years, as is prescribed in the statutes of this Holy Metropolitan Church;'"

[*Latin ed. p. 423*]

BURGEN. 423 For in the Chapter year which began on June 1, 1868, and concluded on May 30, 1869, there were one hundred and fifty-six days of absence; in the year from 1884 to 1885, one hundred and fifty-two; from 1885 to 1886, one hundred and sixty; and from 1886 to 1887, one hundred and eighty. These days include those of recitation (in this Church, it is permitted to be absent for one hundred and fifty days in any year, by Apostolic privilege, which still endures despite the declaration of the Sacred Congregation of Councils, contrary to the Tridentine decree); but not those due to infirmity, nor those in which, although present in the records, or marked with a question mark indicating doubt of his presence in the choir, he is nevertheless considered present. "Regarding a matter brought up for deliberation, such a request was dismissed, and this is the reason why the Chapter rendered no judgment. Now, concerning the merits attributed to the Orator in prayer, we have nothing to say, because even if they were true, they would not pertain to the matter at hand, nor to us; but the situation is different with regard to what is asserted therein, namely, that daily distributions are necessary for the Orator for his necessary and honorable sustenance; for it is far from the truth, rather, the esteemed Primicerius is truly abundantly provided for; for he is supported by the expenses of the Seminary, and furthermore, the Seminary also contributes to his expenses for medicine, which occurred throughout the time he lived in the Seminary; therefore, the aforementioned Primicerius was able, as he is now able, to either provide all the fruits [of his benefice], or to consume them in private expenses. "Regarding the other matter, namely, concerning the Bull granted to this Chapter by Gregory XV, we respond to the Roman Pontiff that, therein, the forty years of residence, required by common law, are reduced to thirty and regulated; however, so that, according to the statutes of this Church, the benefice may be granted with the fruits, but not with the daily distributions, and that the Bull adds something else concerning the remaining conditions for obtaining the benefice. Nevertheless, the Chapter has always understood that residence is a commendable and continuous thing.

[*Latin ed. p. 424*]

424 From the Decrees of the Holy Council, it is entirely necessary for such a grace; and thus, while this [jubilate] has been granted to others, whether Canonically, or by Benefice, this reason is always given: "because, without any interruption, the service has been performed for thirty years after the first residence"; and it has always been granted, according to the Bull and

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the statutes, only with the fruits [of the benefice] to be given, but not with the daily distributions; which can still be seen today in two jubilates, who are currently existing, and who ought to be present in the choir in order to receive such distributions. "This is now, Most Reverend Lord, the opinion of the Chapter, having before our eyes several declarations of the Holy Congregation, in which the grace of the jubilate has been denied due to a non-continuous service; thus, in Rome, on August 6, 1711; thus, in Macerata, on March 8, 1698." And in the doubts of jubilates resolved by such a Holy Congregation, on the days of September 24 and December 17, 1718, in which such grace was denied to those absent due to studies; therefore, all the more it will be denied to those who were absent for no reason, and of whom it cannot be said that their residence was continuous and praiseworthy. Furthermore, I inquired of the Bishop whether this custom prevailed in other churches in Hispaniae; and the Bishop replied: "I have inquired of the Chapters of the other churches in Hispaniae concerning this matter, and according to the responses which I have received from almost all of them, I must report to the Holy Congregation that in none of them, from which I received a response, does the aforementioned custom prevail." The Bull of Gregory XV is of the following tenor: "Gregory, Bishop, Servant of the Servants of God, for the perpetual remembrance of the matter. Because human judgment is often deceived by uncertainty, when establishing measures and forms, so that those things which seemed to have lasting efficacy, become of little efficacy with the passage of time. Therefore, the Roman Pontiff, carefully considering each thing with certain moderation, sometimes reforms and regulates such statutes for the better, according to the times, places, and causes that are due."

[*Latin ed. p. 425*]

BURGOS. 425. It seems fitting to act prudently in the Lord. Indeed, a petition was recently presented to us on behalf of the beloved sons, the Dean and Chapter of the Church of Burgos, which contained the following: that within said Church there exists a statute, based on an ancient custom long observed in said Church, according to which, a beneficiary of the same Church, who has resided there for forty years, after having completed half a year of residence, may become eligible for jubilation; and although, even if he does not always reside there afterwards, he is considered to be present, except with regard to daily distributions, which always benefit from personal residence. Furthermore, as the same petition stated, the life of man is now shorter than it was in former times; and after the Council of Trent and the decrees annexed to it and distributed among the Canonicates, Prebends, and portions of Cathedral Churches, no one is permitted to obtain a Canonicate, Prebend, or portion in such Cathedral Churches before completing his twenty-first year of age; and therefore, and perhaps also because of the long and severe winters prevalent in the city of Burgos,

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experience has shown, or almost no, or very few, of the beneficiaries of said Church of Burgos reach the years required for jubilation; whereas, in other churches of Spain, the time required to obtain jubilation is limited to thirty years of residence. Therefore, the aforementioned Dean and Chapter humbly requested that We might deign to provide for them appropriately in these matters, with paternal kindness. We, therefore, inclined to these supplications, and in order to achieve the purpose of the present document, absolve the aforementioned Dean and Chapter, and consider them absolved from any excommunications, suspensions, interdicts, and other ecclesiastical sentences, censures, and penalties, whether imposed by law or by man, for any reason or cause whatsoever, if any such exist, and We hereby reduce the forty years of residence required for obtaining such jubilation to thirty years, by Our Apostolic authority.

[*Latin ed. p. 426*]

426 From the decrees of the Council, we are reminded and we regulate. And now, and for the time being, concerning the Dean, those holding offices, the Canons, and both full and half beneficiaries, and other beneficed persons of the Church of Burgos, so that from now on, for all future times, they should not wait more than forty years to receive the jubileum, as is predicted: but those among them who, after having resided for thirty years in that same Church, have obtained and enjoyed this grace of the jubileum, we grant and concede to them perpetually. We decree that this should henceforth be fully and inviolably observed by all to whom it pertains, and for as long as it may concern anyone. And now, and for the time being, the Dean, those holding offices, Canons, beneficiaries, and others of this kind, should never, by any authority, pretext, color, or cause, be troubled, disturbed, or hindered in any way. And thus, they should be judged and defined by any ordinary judges, and delegates exercising any authority, and by auditors of the Apostolic Palace, and by Cardinals of the Holy Roman Church, and by legates and vice-legates, and by envoys of the Apostolic See. Moreover, it shall be null and void if anyone, with knowledge or ignorance, should attempt to act otherwise in these matters. Notwithstanding any special or general constitutions and ordinances issued by the Apostolic, and in synodal, provincial, and universal councils: nor the aforementioned statutes, and customs, and usages, and privileges, and indulgences, and Apostolic letters, granted to the same Church of Burgos, and to its Prelate, and to the aforementioned Chapter, and to any other persons, under any terms, and forms, and with any clauses, and decrees, perhaps in contrary ways, conceded, approved, and innovated: all of which, even if special and specific exceptions are made concerning them, and their entire content,

[*Latin ed. p. 427*]

BURGOS. 427. It is necessary, and individually, and word for word,

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and not through general clauses, that mention, or any other expression, be made, or some other suitable form be used to ensure that, while other things remain in their full force, in this particular instance, and expressly, we derogate from them, and from all other contrary things whatsoever. Therefore, it is not permitted to any person whatsoever to infringe this page of our absolution, remission, moderation, concession, indulgence, decree, and derogation, or to dare to contradict it with reckless audacity. If anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul. Given in Rome, at the Basilica of Saint Mary Major, in the year one thousand six hundred and twenty-one, on the seventh day before the Kalends of September, in the first year of our pontificate."

Synopsis of Discussion. In this question concerning the granting of jubilation, with regard to the cleric, it is specifically the case that this is not a matter of granting an indulgence by grace, but of granting jubilation to the cleric by right, if he presents what is required by the Constitution *Quia plerumque*, issued by Gregory XV, to the Chapter of Burgos. Therefore, the question is: "Whether and how the cleric has the right to jubilation in this case." Furthermore, something else is specific in this matter, namely, that the cleric who is granted jubilation is permitted to enjoy the revenues of the benefice and the daily distributions; although the choir is not involved. But in the Chapter of Burgos, before the Gregorian Constitution, the situation was as follows, as stated in the same Constitution: "Among other things, there exists in said Church a statute, according to which, considering the ancient custom that is used and observed in said Church, the beneficiary of the same Church, who has resided there for forty years, after having completed the first half-year of residence, may be granted jubilation; and although he may not always reside there, he shall nevertheless be considered as present, except with regard to the daily distributions, which always benefit the person."

[*Latin ed. p. 428*]

428 FROM THE DECREES OF THE COUNCIL. Regarding the residence. Then, a legitimate decree derogates from the established custom of the Chapter, stating: "Henceforth, for all future times, preachers shall not be expected to reside for more than forty years in order to obtain the grant of the jubileo [jubilee], but those who, after having made their first residence, shall have resided for thirty years within the same Church, shall obtain the grace of this jubileo, and shall have obtained it, etc." Therefore, the derogation concerns only the time, but no derogation is expressed regarding the same conditions. Indeed, there is no mention of the daily distributions which, henceforth, will benefit those personally not residing, who have received the jubileo. Furthermore, when a law, whether ancient or written or customary or common or particular, is derogated from, it is not

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understood that the old law has been derogated from or changed, except insofar as it is expressly stated. Therefore, when the Orator, in his prayers, "most earnestly requests the granting of the jubileo, so that he may be freed from obligations and may enjoy the benefits and distributions," he seems to ask for more than is contained in the Gregorian constitution. Furthermore, Pope Gregory in his Rescript, does not mention the conditions by which one, in order to be granted the jubileo, must have sufficiently served the Church; but the silence of the Pontiff is supplemented by the universally accepted practice, and most extensively by the jurisprudence of the Sacred Congregation of the Council, namely that the service must be laudable and continuous. Hence, whenever the matter of the grant of the jubileo is discussed in the Sacred Congregation of the Council, the first question asked is whether it can be ascertained from the registers of attendance that the service has been continuous. Indeed, in one case in Sutri, on September 22, 1855, when it appeared from the records that the Orator's service had not been continuous, it was decided that he should repeat the service after completing forty years of service and making up for the absences. The Sacred Congregation of the Council reminds us of this constant practice in Garcias De benef. part. 3, cap. 2, § i, n. 134; Benedict XIV De syn. dioeces, lib. 13, c. 9, n. 13, and provides further evidence in a resolution in Rome, February 9, 1822. However, in the present case, the Chapter records indicate that Emmanuel Gonzalez's service "was not continuous in all years...; for in the year..."

[*Latin ed. p. 429*]

CHAPTER 429: Concerning absences, which began on June 1, 1868, and ended on May 30, 1869, amounted to one hundred and fifty-six days; in the years 1884 to 1885, one hundred and fifty-two days; in 1885 to 1886, one hundred and sixty days; and in 1886 to 1887, one hundred and eighty days. These days include days of recreation (in this Church, it is permitted to be absent for one hundred and fifty days in any year by Apostolic privilege, which, despite the decree of the Council of Trent and the declaration of the Holy Congregation, still remains in effect); but not those days in which he was absent due to illness, nor those in which there is a doubtful indication in the records or registers of his presence in the choir, and yet he is considered present.

Furthermore, it has been the custom of this Holy Order, whenever the service has not been continuous, to record the following formulas: "He returned after absences, or he returned after a year, or other similar circumstances, by which the Holy Congregation is accustomed to proceed in various cases, so that the interrupted service, due to absences (which, however, had a laudable cause) and absences, may be considered complete" (thus, in Cento; in Segni-Narnien, June 28, 1857, § These; in Albinganen, August 27, 1853, § Reque vera).

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But, moreover, with regard to those absent for a laudable cause and with Apostolic indulgences, the service is not automatically considered to have been continuous, as is required for the granting of jubilees. Indeed, in the Causes concerning Jubilees, on September 24 and December 17, 1718, Pope Benedict XIV, while serving as Secretary, in response to the question: "Whether the jubilees should be granted to canons and beneficed clergy who have served in churches for a period of 40 years, even if, during that period, they were absent from the churches with due permissions and indulgences, either due to illness, or for the sake of studies, or for the service of their church, or for reasons for which they obtained indulgences for absence, for days and hours, or were simply and absolutely absent from the church during the performance of their assigned office," it was decreed: "Affirmatively, with regard to those absent due to illness with due permissions and indulgences, or for the service of their church, or with..."

[*Latin ed. p. 430*]

430 From the decrees of the Council, you say that dispensations are granted for days and hours; however, not in the case of those absent due to studies, nor for those who have received a dispensation to be absent, which remains in effect during the office. Therefore, it can be deduced that absences due to faults do not harm the Canon Primicerius, whenever he is absent, whether due to infirmity or during vacation periods, provided that he is duly counted among those entitled to such absences; but they certainly do not benefit him if the same Orator is absent for other reasons, even if those reasons are praiseworthy or highly praiseworthy. After deducting the faults excused by the chapter statutes due to vacation periods, as is evident, only a few faults remain concerning which it is not certain whether the cause is a praiseworthy and legitimate one, or infirmity, or some other similar reason, notwithstanding the continuous calculation of time required for obtaining the jubilation. Since the canons raise a doubt, and certain signs are found in the books of faults which do not sufficiently express the presence [of the Orator], it is helpful to recall the rule applied by the Sacred Congregation of Rites in the aforementioned decree concerning the jubilation of Sutri, dated September 22, 1855. Indeed, it was objected that the books of faults were missing from the years 1812 to 1824; and therefore, it was not sufficiently clear whether the service had been duly performed continuously. However, it was considered that the loss of the books could not hinder the Orator, since, for the remaining time, the presumption of law favored him; namely, that the service had been continuous and praiseworthy, no less than for the time for which a record remained in the books of faults. Furthermore, when other conditions do not correspond to the petition of the Canon Primicerius, he is certainly not aided by infirmity. For, if this is proven, the Sacred Congregation of Rites usually grants a dispensation from the choir, but not a dispensation

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from the jubilation; as in the Indult of Urbina, dated September 18, 1802, in which, since a dispensation from the jubilation was requested due to the reason of infirmity, the response to the proposed doubt: "Whether and how a dispensation from the jubilation should be granted in this case," was: "No, but a dispensation from being present in the choir during infirmity should be granted." Nevertheless, it could not be objected that...

[*Latin ed. p. 431*]

BURGESS. 451. A vice of the Church which the Regular Canons might perhaps wish to remedy; for in the aforementioned case concerning doubtful dispensations, under IV: "Can a person, notwithstanding the grant of a dispensation, be compelled to serve if the divine worship suffers detriment?" the response was: "Affirmatively," although under V: "Can a person, notwithstanding the grant of a dispensation, be obliged to remain, although not obliged to collect tithes?" the rescript stated: "Negatively." Furthermore, if special obligations are attached to a canon by the founding statutes, these special obligations are not included in the grant of a dispensation, hence the Sacred Congregation frequently writes: "For the grant of a dispensation, with the usual cautions," as in Fermo on April 9, 1859, or "For the grant of a dispensation, with the usual clauses," as in Montisfalisci on January 31, 1852. Moreover, opposition from the Chapter to the Orator does not greatly impede the granting of the dispensation, since the Sacred Congregation does not require the Chapter's consent to be obtained in order to grant the dispensation or to assert a right, but merely orders them to be heard, so that it may be certain of their commendable and continuous service, and so that the causes may be revealed if, perchance, they exist which might obstruct the granting of the dispensation. Indeed, it is not unknown that the Sacred Congregation has granted a dispensation even against the vote of the Chapter, as is evident in the Jubilee of Città della Pieve of November 23, 1872, and in another Jubilee of Civita Castellana of July 15, 1820. Nor does it impede the Orator to possess only the Canonry of the Primicariate from the year 1878; for in the aforementioned case concerning doubtful dispensations, under II: "Should a dispensation be granted to those who have served for a period of 40 years, but partly in one church, partly in another, or as canons in both, or as beneficiaries in one and canons in the other, or to those who have served in the same church throughout the entire time, but partly as clerical beneficiaries, partly as beneficiaries, and sometimes partly as canons, or partly as coadjutors, and partly as principals and titulars?" the rescript stated: "To II: Negatively to the first part, affirmatively to the second."

[*Latin ed. p. 432*]

432 FROM THE HOLY GENERAL COUNCIL: Having considered these matters, the purpose was to resolve the doubt concerning whether and how

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the Orator has the right to grant a dispensation in this case. RESOLUTION. The Holy Congregation, after deliberation on August 19, 1899, decided to respond: Provided that diligent service for thirty years is proven, for the granting of a dispensation according to the capitular statutes. ON THE VALIDITY OF MARRIAGES AND JURISDICTION. August 19, 1899. Session 24, chapter 3. Concerning matrimonial affairs. SUMMARY OF THE FACTS. This controversy is contained in two questions; and one is prejudicial to the other, since it is asked whether the marriage between D. Hadrian of Cremona and Aemilia Mangion was initiated; and whether it is valid; and because both the Melitan and the Gozitan Courts have addressed this question, disputing judicial jurisdiction, the first prejudicial question is whether the two sentences already issued by the Melitan Court are to be considered valid, so that this Court may exercise judicial jurisdiction; and, assuming this, the second question arises, namely, whether those same sentences are to be considered valid, in that they declare the marriage to be invalid, or at least null. Indeed, as far as the facts are concerned, Paulus Mangion, the father of Aemilia, a citizen of the Melitan State, frequently spends time on the island of Gozo, where he has two houses. In 1897, while there, he began to discuss with a certain Priest Xuereb about finding a husband for his daughter Aemilia. - The priest, who seemed to have been prepared for this matter for some time, immediately offered Hadrian of Cremona, a doctor practicing in the same place.

[*Latin ed. p. 433*]

MELEVITANA 455, an island. – Father, having explored the girl's intentions, it appears that she willingly consented to entering into a betrothal with Hadrian; and this, in truth, was communicated to the girl Emilia before she left the city of Gozo. Subsequently, serious discussions regarding the aforementioned betrothal took place; however, these did not last even for a month, since the father of the girl and Hadrian of Cremona informed each other in writing that all negotiations had already been resolved; inasmuch as the daughter had pledged her faith to Joseph Vassallo, and the marriage had already been celebrated, as all the faithful were reminded by the public announcements customarily made in the Church. Feeling that his faith had been violated, Hadrian appealed to the Gozitan Court, objecting to the impediment arising from the initial betrothal with Emilia Mangion, preventing her from entering into other marriages. The Gozitan Court, duly summoned Emilia on July 27, 1898, and initiated an investigation into the matter. However, Emilia, in turn, petitioned the Melevitan Court to declare the Gozitan Court incompetent in this matter, and to, through ordinary judgment, determine the validity of the betrothal. Therefore, on August 10, 1898, the Melevitan judge sent a summons to Hadrian of Cremona, requiring him to appear before the same Court. The defendant responded to the summons, presenting three main objections;

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firstly, he objected that the summons given to him was invalid, since it was issued on a holiday, specifically on August 10, the feast day of Saint Lawrence, both for the Melevitan Court and for the Gozitan Court; secondly, he declared that the Vicar General and the assessor of the tribunal were biased in their judgment, because they were being summoned by the defendant himself as witnesses in the case; and thirdly, he argued that the case was already preempted by the Gozitan Court due to a matter of legal prevention. The Melevitan Court, on August 26, 1898, issued the following decree: "Since the first objection raised in this Great Court by Mr. Hadrian Cremona against Mrs. Emilia Mangion regarding the nullity of the notification is not to be admitted; Acts, Volume XXXII, page CCCLXXIX. 28.

[*Latin ed. p. 434*]

434 FROM the decrees of the Council itself, as it is evident from the records of the proceedings, on the tenth day of the current month, the sacred marriage of Saint Lawrence was not properly completed; and canonical law (see Schmalzgrueber; Reiffenstuel, and others), to which the Civil Law of Melita also agrees, assigns only Sundays and other festive days, for the proper completion of the marriage, in cases of such nullity; "Since a second exception regarding the defect in the term cannot be admitted, for, according to Reiffenstuel and Gagliardi on Judgments, the term must be established by the judge, according to the circumstances of the place, the persons, and other causes; " Since also the third exception must be rejected, namely, that neither the Vicar General nor the Assessor can render judgment in the case, since they themselves must be called to testify, for whatever has reached our knowledge was only by reason of office; " Since, finally, no exception whatsoever can be admitted, in the fourth place, regarding the pendency of the lawsuit, for the first citation was made by an incompetent judge, and therefore invalid, and does not establish the pendency of the lawsuit; furthermore, the bride, who is both the defendant in the first citation and the plaintiff in the second, and by reason of origin, and by reason of domicile, and by reason of the principal contract, which is the marriage with a third person, and which is impugned, is not subject to the jurisdiction of the Diocese of Gozo, but of Melita, where the marriage is to be celebrated; " Having considered all these things, and others, we declare that the aforementioned exceptions presented by the Reverend Don Adriano Cremona, against the Lady Emilia Mangion, in this Grand Court, are to be entirely rejected, and therefore, the proceedings should proceed to the contestation of the lawsuit, according to the course of law." Against this decree, Adriano Cremona protested, indicating his intention to institute an appeal, and to abstain from further prosecution of the case; but the Court of Melita, on September 6, 1898, presented the following judgment regarding the merits of the case: "Having seen the citation from this Grand Court,

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dated August 8.

[*Latin ed. p. 435*]

On the 435th day, the expedited proceedings concerning Aemilia Mangion against Doctor Hadrian Cremona for the revocation of the impediment imposed by him in the Episcopal Court of Gaudensian were concluded.

"Having examined and carefully considered the preliminary objections presented by the aforementioned party against the aforementioned party.

"Having seen Our decree of August 26, 1898, We reject those same objections.

"Having seen the note presented by the aforementioned party, in which he declares that, in contempt of the aforementioned Our Decree, he will abstain from further proceedings in the case.

"Having seen another note from the aforementioned party, in which he insists that this Grand Court declare that it is permissible for him to contract marriage with Doctor Joseph Vassallo.

"Having also seen the note of appeal presented by the aforementioned party, which in no way impedes the publication of the judgment, since Our Decree of August 26, 1898 does not impede the prosecution of the case.

"Having considered all other matters that ought to be considered; and having pondered that the aforementioned party has in no way proven his assertion of a betrothal with the aforementioned party,

"We declare and pronounce that the aforementioned Aemilia Mangion enjoys full freedom to lawfully and validly contract marriage in the sight of the Church with the aforementioned Doctor Joseph Vassallo, unless some other canonical impediment prevents her.

Meanwhile, the judgment remains pending in the Gaudensian Court, because the Vicar General and the court assessor, from the very beginning of the initiated proceedings, had indicated that they wished to abstain from judging, since they are related by blood in the second degree with the plaintiff. Therefore, it was necessary to deliberate about appointing substitute judges, and when this was completed, the following decree was issued on October 19, 1898.

"Having seen the decree of non-marriage, issued by this Court on July 27, 1898, against Aemilia Mangion, at the request of Doctor Hadrian Cremona, affirming his betrothal with the aforementioned Aemilia."

[*Latin ed. p. 436*]

456 FROM THE DECREES OF THE COUNCIL: "Having seen the petition from Hadrian of Cremona, urging that the previously issued mandate be fully enforced against Aemilia, who intends to enter into marriage with Joseph Vassallo, a Doctor of Medicine: "Having examined the document

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presented by Aemilia Mangion, it appears that this Court lacks jurisdiction in this matter, and that the case itself does not pertain to it: "Having also examined the other documents presented by both parties. "Considering that Aemilia, although residing in the Diocese of Melitense, has, as evidenced by the documents presented, entered into a valid, or perhaps valid, betrothal with Hadrian of Cremona in the Diocese of Gaudisiensi, and that they have agreed to celebrate the marriage on the island of Gozo, with Vincent Bugeja and Maria Xaveria Cremona as witnesses. "Considering that, among the circumstances or factors from which the jurisdiction of an Ecclesiastical Tribunal can arise, in addition to domicile, the place where an obligation was contracted must also be considered, as stated by Gregory IX in chapter 20 of *Licet*. "Considering that, since Aemilia Mangion resides in Melita, but entered into the betrothal with the aforementioned party on the island of Gozo, her forum is multiple, and therefore she can be brought before either the Ecclesiastical Tribunal of Melitense or the Tribunal of Gaudisiensi to hear her case; however, the choice of which forum to use rests with the plaintiff. Ferraris, *Biblia*, under the word "Forum," 6. "Considering that the Council of Trent decreed that, before a marriage is contracted, it must be publicly announced three times by the parish priest of each of the contracting parties, on three consecutive festive days in the church, during the solemnities of the Mass, announcing the marriage that is to take place. Session XXIV, On the Reform of Matrimony, Chapter 1. "Considering that Aemilia Mangion has resided on the island of Gozo not for months, but for entire years, she should be considered to belong to the parish of St. George M. of that island, and therefore, in order that the entire decree of Trent may be observed..."

[*Latin ed. p. 437*]

It is possible that Aemilia, "from among the contracting parties," should publicly denounce her marriage to the aforementioned Joseph Vassallo in the very Church of St. George. Antonelli, *De loco legali*, Book 1, Chapter VII, § 5. Ibid., Question XIII, § 215; De Angelis, Book IV, Title III, § 4. "For, when a marriage is contracted, it is publicly denounced so that any impediment, if there be one, which hinders the marriage, may be revealed." Consider that Aemilia (having resided in Gozo for years, as testified by M. Michaelina, her sister, of the Order of Charity; but at an age when she could have entered into marriage), should have been required by the Melitensi Curia to present proof of her free state, as they say, a document drawn up by this Gozitan Curia. Ferraris, *Biblia*, under the word "Denunciationes Matrimoniales," § 97. Consider that the Melitensi Curia, having failed to require such proof of Aemilia's free state for the time she spent in Gozo, nevertheless requested the ecclesiastical authority of Gozo to order that the marriage of Aemilia with Joseph Vassallo be duly denounced by the parish priest of St. George. See the example of the Edict of Denunciation.

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Consider that the revelation of any impediments could have taken place at the Gozitan Curia itself, which had ordered these denunciations to be made through the aforementioned parish priest of St. George. Hence, consider Hadrian, of Cremona, the plaintiff; who has legally urged this Curia to rule on the betrothal, which he claims exists between himself and the aforementioned Aemilia. We declare, pronounce, and state that it pertains to this Curia the right and power to examine the cause in question. Furthermore, the expenses of this Decree shall be borne by both parties; and we leave the decision regarding the proper and just initiation of the process to be determined. From this sentence, Aemilia Mangion appealed to the Sacred Congregation; nevertheless, she continued the proceedings.

[*Latin ed. p. 438*]

458 FROM the Most Holy Council, concerning the merit of the cause, before the judge of Gaudisiensi, two witnesses were presented by each side to assert the nullity of the betrothal. When the appeals were heard by the Most Holy Congregation, both by one side and by the other, the matter remained suspended before the court of Gaudisiensi, pending the judgment concerning the merit of the cause, in obedience to this supreme Tribunal, as the Bishop declared in a letter dated July 3, 1899. A SYNOPTIC DISCUSSION. Subsequently, the question was raised before the Most Eminent and Reverend Fathers whether the two sentences of the Melitense court already rendered should be confirmed or rejected. Hadrianus Cremona opposed them; and furthermore, a third party, Aemilia Mangion, requested, "Whether there is a place for a dispensation concerning the impediment arising from betrothals in this case." Hadrianus Cremona appointed a procurator, whose arguments are as follows. In the first point, he argues that the sentence of the Melitense court of August 26, 1898, is invalid, because the court of Gaudisiensi was clearly competent, by right of priority; indeed, Hadrianus Cremona had previously appealed to it. Furthermore, the advocate notes that another title of competence in the court of Gaudisiensi is repeated by the actions of Aemilia, who willingly recognized the competence of that court, or extended it. But it is clear, the advocate notes, that jurisdiction is acquired through a prorogation, concerning which Engel writes in *Colleg. univ. iur.*, book 1, title 32, number 30: "Finally, jurisdiction is acquired in addition to the aforementioned ways, through prorogation. And prorogation of jurisdiction is nothing other than an extension of it, by the consent of the parties, beyond the limits within which it is exercised. And this extension occurs in four ways, namely, from person to person, from thing to thing, from place to place, and from time to time." It is sufficient for the judge to possess common jurisdiction, as another ordinary possesses, and for the prorogation to be signified by the actions and words of the parties. And in fact and in law, prorogation is sufficiently signified

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if the defendant, in a contested lawsuit, presents delaying objections.

[*Latin ed. p. 439*]

In the matter of MELEVITANA 459, whether witnesses should be heard or whether the court should otherwise exercise its jurisdiction, as Schmalzgrueber states in paragraph 1, title 2, number 144: "It suffices that there be a tacit agreement, which is explained by the very fact that the parties contest the matter before such a court, or that one party raises a dilatory exception." However, the plaintiff's attorney insists that the court of Gozo was competent under its own jurisdiction, or under the jurisdiction of prevention. He points out that the case concerning the impediment to the marriage was initially brought before the court of Gozo by the plaintiff. The defense objects that the court lacked jurisdiction because the plaintiff must follow the domicile of the thing, and the family of Emilia has its domicile in the neighboring island of Malta. The attorney for Emilia replies that her father has a double domicile, as he resides in both places for many years. In law, says Schmalzgrueber, with no dissent: "For a person to acquire a domicile in two or more places, it is necessary that he reside in those places for an equal amount of time; but this must be understood not mathematically, as if it were necessary to reside in one place no more than one day or week than in the other; but morally, so that in each place he resides for a significant portion of the year, although not equally, as rightly observed by P. Frider. and others." Indeed, Emilia testifies, "I was in Gozo for four years for my education at the episcopal conservatory." Her sister, while residing in Gozo, fell ill and died there. Likewise, her mother also died there. The father, Paulus, had three residences: one on the island of Keli, "another in Sliema," and two in Gozo, "one house in the city of Vittoria of Gozo, and another in Migiarro," that is, in the rural region of the island. He also states that he enjoyed living there for several months, and provides an example of the time that preceded the case. However, the attorney argues that even if the title of domicile were lacking in this case, there is ample basis in the title of contract. As Gregory IX states in chapter 20, in the section on the forum of commerce, and as confirmed by all jurisprudence, there are four grounds for acquiring judicial jurisdiction: "by reason of the delict, or of the contract, or..."

[*Latin ed. p. 440*]

440 From the decrees of the Council of Trent: "The domicile, or the matter concerning which the suit is brought, is the basis of jurisdiction." Therefore, whenever a lawsuit is to be instituted, the plaintiff has the power to choose one of these grounds. Thus, Reiffenst. lib. 2, tit. 2, n. 6. "If the defendant to be summoned draws lots among several forums (as frequently happens), the plaintiff has the option of summoning the defendant in the forum he prefers." Thus, the Glossa, and this is the common opinion of

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canonists, as testified by Fagnano, etc. Furthermore, the forum of the contract is that which is established by Schmalzgr., loc. cit., n. 30: "Another method of determining the forum is by contract: for each party is subject to the jurisdiction of the place where the contract was made, so that he may be summoned there, by reason of that contract." Thus, clearly stated in cap. fin. h. t., cap. R o mana 1 § 6: "The contracting parties are subject to the jurisdiction in that place." Moreover, this also obtains throughout the nations under civil law, as is evident in the judicial practice that prevails today among us, art. 91 - ibid - "Personal actions and real actions concerning movable property may also be brought before the judicial authority of the place where the obligation was contracted or must be performed, etc." Indeed, the advocate argues that from the beginning and always, this matter has been dealt with on the island of Gaudisii, where both the Cremona and Mangion families resided while the matter was being handled. In that same island, while the client's family resided there permanently, the other family delayed in addressing the matter. The mediator was the priest Xuereb, residing on the same island. Witnesses were presented, and if one or the other is excepted, all are from the same island. However, it is objected that, in order to determine the forum based on the contract, it is necessary for the defendant to be found in the place where the contract was made when the plaintiff gives him notice of the lawsuit before the magistrate. The advocate responds that the defendant cannot be summoned in the place where the contract was made unless he is found there at that time; this applies only to foreigners and strangers, not to residents who maintain a certain residence in that place, as testified by Ferraris, roc. Forum, n. 18 - ibid - "When someone, as a foreigner and traveler, contracts in a certain place, intending to leave shortly thereafter, and this is known to the other contracting party: then he is not obliged to appear there, unless he wishes to." And the text states in 1. Haeres S Proinde ff. de Iudiciis - ibid -

[*Latin ed. p. 441*]

MALTA 441 "It is most difficult for those who, while traveling or residing in a place, must defend themselves in as many places as they have been." Therefore, Schmalz, book 2, title 2, paragraph 45, distinguishes: "Either the defendant, being a foreigner, is found in the place where he entered into the contract or promised to fulfill it, or he is not found. If he is found, as long as he remains in that place, the judge can exercise his jurisdiction over him." However, the speaker notes that it is ridiculous to call a foreigner and visitor in Gaul, Paul Mangion, who has two houses on the island, one urban and one for farming. — But the advocate says that all difficulties vanish because Paul Mangion was on the island when he received the bond. Because it is objected that the forum of the contract should be recognized in the court of Malta, and not in Gozo, since the marriage should have been celebrated not on the smaller island, but in Malta, the advocate replies that

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this exception is absurd, because the betrothal contract constitutes itself, as no one can deny, whatever place may be designated for the celebration of the marriage. Therefore, the advocate concludes, Hadrianus Cremona, who, after being notified of an impediment to the marriage; immediately brought the opposing party before the court of Gozo, in order to confirm the impediment, using a law that is well known: whereas, the court of Malta violated the law, which, having instituted a trial before the magistrate of Gozo, lacked jurisdiction. The witness, regarding the common law, cites Schmalz, loc. cit., paragraph 136: "The question of the forum of prevention is raised. This is introduced by citation, and indeed for a double reason: one, when the defendant can actually be summoned before several judges; the other, when, although neither judge is actually competent with respect to the matter, one of them, while still competent, has begun the proceedings: in both cases, the judge who has undertaken to have the case heard in his forum can continue it, and exclude the other judges whom he thus prevents from knowing about the case. The reason is that, as is said in 1. Ubi 30 ff. concerning the judge, where judgment is accepted, there also the end must be reached."

[*Latin ed. p. 442*]

442 FROM THE DECREES OF THE COUNCIL, it is clear that a single citation is sufficient... because through a single citation alone, jurisdiction is already established and perpetuated. The Advocate proceeds to another point in his argument, discussing the value of betrothals, and notes that Emilia declared, under oath, that she had adhered to the petition of Hadrian of Cremona; this is confirmed by the Father. Indeed, even now, while the dissolution of the betrothal is demanded, it is stipulated that "prior absolution from any censure incurred due to the betrothal must be obtained." However, the Advocate argues, a thousand witnesses could not prove that someone who confesses the debt owed to them is innocent. Furthermore, the Rota stated in the case of *Maiorica*, April 25, 1746, *Bussio*, no. 18: "It is known that no type of proof is more absolute than that which is extracted from the mouth of the person themselves through confession, according to Text, etc., and in the terms of betrothals, the Rota in the case of *Buratto*, December, no. 743, no. 23, and in the decree no. 172, no. 12, part 2, *Rec.*, etc." However, the Advocate states, nothing is more intolerable than the fact that Emilia is permitted to withdraw from the betrothal, when no reason or proof is offered, as the Bishop openly declares. Moreover, the Advocate argues, there is no excuse offered by Emilia that can be believed or accepted, but rather, it is filled with foolish lies. However, Emilia claims that she lawfully withdrew from the betrothal because she was deceived due to her young age, and because she foresaw coercion from her brother; to which the Advocate responds that the coercion cannot be proven in any way; and that the deception is

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a fabrication to be rejected. However, the Advocate points out that these excuses offered by the woman are all the more to be refuted, because they are intended to more easily obtain a dispensation from the impediment of the betrothal, upon which Emilia and her supporters rely entirely, and that all other arguments are therefore useless, and that a dispensation must be sought from the benevolence of the Holy Father through prayer. But this is asserted with excessive lightness, the Advocate contends, recalling the rules of justice. "Is it asked whether and in what way betrothals can be dissolved by dispensation? The answer is: they can be dissolved..."

[*Latin ed. p. 443*]

The dispensation, it is clear, must be granted, not by anyone else than the Supreme Pontiff. The reason is that, through validly contracted marriage, a right has been acquired by a third party, which no one except the supreme head [of the Church] can remove. However, this power can be exercised by the Pontiff, only for just and serious causes." (Schmalz, book 4, title 1, § 214). The petitioner argues: "A just and serious cause for dispensing does not lack, for she absolutely refuses to marry in Cremona. Therefore, she must either be compelled or the marriage must be dissolved. But, especially in these modern times, minds are averse to coercion, which produces difficult consequences. The defender, in the first place, even when speaking of coercion, points out that it is not fitting, and that a judgment must always precede, in order to consider the other effects of punishments and satisfactions, as Schmalzgrueber mentions in the cited passage, number 94. But he insists that here we are not dealing with a woman being compelled to marry, but only with preventing a marriage with a third party. Schmalzgrueber, in the cited passage, number 81, teaches that a very serious obligation arises from freely entered marriages. "As it must be considered certain, the obligation arising from marriage is a grave one. Thus, St. Thomas, Sánchez, Layman, Zoes, Pirhing, etc. The reason is that every contract obligates by justice, and indeed, if the matter is serious, under mortal sin; but marriage is a contract *facio ut facias* [I do, that you do], which creates a mutual and reciprocal obligation, and the matter is serious, because great injury is inflicted on the other if it is not fulfilled: therefore, it obligates gravely. This obligation does not hinder the freedom of the spouse, because, by entering into the marriage, giving faith to the other, she has already used her freedom; therefore, she can justly be compelled to fulfill the promise made with the free use of her freedom." Furthermore, the orator argues that the force of the marriage promise must be especially respected among the people of Melitana, among whom the observance of canon law still fully prevails, fully recognized by secular authority, so that the effectiveness of the obligation

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is happily maintained by the jurisprudence of the ecclesiastical courts.

[*Latin ed. p. 444*]

444 FROM S. C. CONCILII concerning marriage; and experience teaches that this greatly contributes to the preservation of moral sanctity. Many examples could be cited on this matter. DEFENSE OF THE WOMAN. On the contrary, because Emilia did not appoint a procurator to act in her favor, but, in accordance with my duty, with greater concern for truth than for the office of a patron. - Firstly, concerning the question of jurisdiction, it must be noted that the Gaudisiensi court cannot exercise jurisdiction unless there is a title derived from the contract. - Indeed, the Mangion family certainly did not have a domicile, nor a quasi-domicile, on the island of Gozo. And they went there with the father for the purpose of recreation, as she stated, and for rural pursuits. But these shorter stays certainly do not constitute a quasi-domicile which requires a residence for a greater part of the year. Therefore, the parish priest without hesitation affirms: "I have never considered the Mangion family as my parishioners." Furthermore, according to the common consensus of Doctors, a party in a contract acquires jurisdiction in a place that is neither a domicile nor a quasi-domicile, provided that he is not prevented by the judge from being present in the place of the contract, provided that it has not been expressly agreed between the parties that the place of the contract is chosen, even if the meeting takes place outside that place, or otherwise, the particular laws of the place do not establish otherwise. - This common doctrine is thus stated by Schmalzgrueber II, title 2, § 41. "Is it possible for a party to be summoned in the place of the contract? Answer: It is possible, if he is found there, or if there is no other agreement between the parties, or if it has been established by the particular laws of the place - I say 1. If he is found there; for no one can be regularly summoned in the place of the contract unless he is found there, as is clear from c. romana 2 § contrahentes 3 h. tit. in 6 I. haeres absens 19 princ. ff. de iud. I say 2. unless there is another agreement, etc." But it is stated that Paulus Mangion was not there when his daughter was summoned. Therefore, Paulus is uncertain whether he was on the island of Gozo when the summons was sent, and he does not assert whether his daughter was then there or elsewhere, removing all doubt, as he later testified without any doubt.

[*Latin ed. p. 445*]

MELEVITANA 445 Consequently, a doubt arises concerning the legitimate jurisdiction and precedence in a matter pending before the Gozo Tribunal. For the entire judicial edifice collapses if it lacks its proper foundation, namely, a legitimate summons, issued by a competent judge, which establishes the basis for the proceedings. However, if the Gozo Tribunal is deemed to lack jurisdiction regarding the act of summoning, then that Tri-

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bunal will be irreparably deprived of its jurisdiction in the judicial matter, which the Melevitana Tribunal had rightfully established through a legitimate decree of summons. Therefore, it has come to pass that no judicial acts, whether performed by the judge or by the parties, are valid in the Gozo Tribunal after the summons issued by the Melevitana Tribunal; nor is there any possibility of transferring jurisdiction. Indeed, the purpose of precedence is to ensure that the party who first initiated the proceedings should be allowed to bring them to a conclusion, according to the well-known principle. Therefore, a judgment already legitimately initiated by one judge cannot be properly rendered by another judge, nor is there any further possibility of transferring jurisdiction. Transfer of jurisdiction has its effect on judgments rendered by multiple judges due to different titles of jurisdiction; it has no effect on judgments already legitimately initiated by one judge, when another judge intervenes. Furthermore, something must be said regarding the merits of the case. Indeed, whatever may be determined concerning the validity of the betrothal, it cannot be proven by the judgment of Melevitana dated September 6, 1898, which states: "We declare and affirm that the aforementioned Emilia Mangion enjoys full freedom to enter into a lawful and valid marriage, etc." And this is stated after previously noting: "Having considered other matters of law, and having reflected that the cited party has in no way proven his assertions regarding the betrothal with the citing party." But in cases of this nature, the judge must proceed ex officio; and if a party has been contumacious or negligent in presenting evidence, such evidence must be supplied by the judge; since in these matters, proceedings must be based on the truth of the facts, which must be investigated and explored even ex officio by the judge, and not merely through simple legal presumptions. In truth, if the question is whether a betrothal has been entered into...

[*Latin ed. p. 446*]

446 From the records of the Sacred Congregation, it appears that the marriage agreement between Emilia and Hadrian cannot be considered to have been definitively annulled, as Emilia Mangion and Paul, her father, have repeatedly testified in explicit terms. However, one might inquire whether the matter concerned the initial stages of the betrothal, or rather, preliminary discussions preceding the marriage agreement; for if neither party, nor the daughter herself, contained a promise of betrothal in the petition of the one who wished to proceed with the marriage, but rather expressed the intention of entering into preliminary discussions regarding marriage, then it does not necessarily constitute a betrothal. Nevertheless, because more serious matters are at stake, it is not permissible to indulge in subtleties. Indeed, it appears that the betrothal was initiated, but in a flawed manner, and that all actions were undertaken without good faith. Certainly, the accounts are so filled with falsehoods and contain such

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contradictions that even a cursory reader can perceive that the opposing party's advocate readily points out, that the events transpired without tranquility. Truly, the ultimate cause of the discord originated in the knowledge that reached both Emilia and her father regarding the betrothal that Hadrian had made to a certain girl named Frendo. How intense the emotional turmoil and the rapid succession of events were within the Mangion family are clearly demonstrated by the letters in which Paul, Emilia's father, informed Hadrian, just a few days after the commencement of the betrothal, namely ten or thirteen days, that all betrothal arrangements had been terminated, lest his daughter meet with harm. Other testimonies are no less clear; and consequently, the question arises spontaneously: whether such a betrothal, insofar as it is valid, requires a dispensation, namely, for caution. Without a doubt, the Roman Pontiff who can dispense from the bond of marriage, whether consummated or not, can, *a fortiori*, dispense from the obligation of betrothal; but it is necessary that there be some just...

[*Latin ed. p. 447*]

MELEVITANA 447 and prudence must concur; indeed, the matter under consideration should weigh more heavily in favor of dispensing with a marriage that has not been consummated than in resolving a contract of betrothal.

In the Secret Consistory, there is a treatise on the legitimate causes for granting dispensations in cases of marriage that has not been consummated; therefore, any further discussion of this matter seems superfluous. Nevertheless, it is worthwhile to cite what Gasparri states in *De mat.* I, 108: "What just cause may exist for this dispensation is left to the prudence of the Roman Pontiff; in general, it can be said that there is a just cause if, after all things have been considered, greater good results from the dispensation than from the fulfillment of the bond of betrothal." The testimonies presented by the Bishop of Melevitana, under oath, seem clearly to demonstrate that a favorable outcome cannot be hoped for from the denial of the dispensation. Having considered these matters, the following questions were proposed: I. Should the decree of the Melevitana Tribunal of August 26, 1898, be annulled or confirmed in this case? II. Should the decree of the Melevitana Tribunal of September 6, 1898, be annulled or confirmed in this case? III. Is there grounds for a dispensation from the impediment arising from betrothal in this case?

RESOLUTION. After discussion in the Sacred Consistory on August 19, 1899, it was decided to respond: To I. The decree should be annulled. To II. As decided in I. To III. Not proposed.

FROM THE SACRED CONGREGATION OF THE HOLY ROMAN CHURCH, THE INQUISITION: A QUESTION. What about a Bishop who inadvertently confirmed certain children with the oil of the catechumens?

Most Blessed Father, Bishop N. N., prostrate at the feet of Your Holiness,

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humbly explains that, finding himself in a large village...

[*Latin ed. p. 448*]

448 FROM THE SACRED CONGREGATION OF THE INQUISITION: In a public church, the sacrament of Confirmation was administered to several hundred children, after having confirmed two-thirds of them. The sacred chrism of the Bishop was then lacking, and it was necessary to resort to the chrism that was kept, together with the oil of the Catechumens, with the Parish Priest. Although every care was taken to use that small vessel which bore the inscription "sacrum chrisma"; nevertheless, in the end, it was discovered that instead, the vessel contained the oil of the Catechumens. The undersigned respectfully asks if and how this involuntary error should be remedied. Furthermore, on Thursday, the 22nd of November, 1899, in a General Congregation held by the Most Eminent and Reverend DD. Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned prayers had been offered, and with the vote of the RR. DD. Consultors preceding, the aforementioned Eminent Cardinals ordered that a response be given: Silence (1). On the following Saturday, the 24th of the same month and year, during an audience granted by the Most Holy Father, Pope Leo XIII, to the Reverend Father, the Assistant of the Holy Office, the Most Holy resolution of the Fathers was approved. I. CAN. MANCINIS. Reverend and Very Reverend Inquisitor. Notary. (1) It does not seem to be argued from this response, Most Holy Congregation, that the Sacred Congregation declared a Confirmation valid, which was conferred with the oil of the Catechumens. However, it seems that such a response was given because of the difficulty of rectifying the error concerning those who were confirmed with the oil of the Catechumens. For although, among many authors, the imposition of hands is the matter of this sacrament, it is not certain that the unction with the sacred chrism is not also a necessary matter. Therefore, it would be more prudent for those in such cases to repeat the Confirmation, knowing those for whom an error occurred, with the proper chrism.

[*Latin ed. p. 449*]

449 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MONASTER, ON MARRIAGE, March 10, 1899. Session 22, chapter 8, concerning dispensations. SUMMARY OF THE CASE: Helena H and Antonius K... , having entered into prior betrothals, during which time, as the man himself confesses, they had an illicit relationship, two years later, on April 19, 1887, they contracted marriage according to the Holy Council of Trent in the church of the parish, commonly called Biefeld, in the diocese of Monaster. On the same day, the spouses, with joyful hearts, began their conjugal life and performed the duties of marriage; but after a considerable period of time, when no hope of procreating children

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appeared, fearing that some defect might exist in the woman's genitals, they went to Bonn to consult with highly skilled medical experts. Indeed, the doctors examined Helena, and they found in her genitals a certain formless vagina, "like a bag with a closed bottom." Soon after, the woman was subjected to a surgical operation by Doctor Henrico Fritsch, professor at the University of Bonn, who, in November 1895, gave the following report on the completed operation: "After opening the body, it was found that the small body on the right is the ovary. The body in the middle is a rudimentary uterus, solid, without an internal cavity, in the shape of a bean, connected to the vagina by a thin band (ligature). Both bodies were removed – the ovary and the rudimentary uterus. The healing was good, without interruption. Mrs. K... was discharged on December 14, 1896." In the meantime, the spouses attempted to resume intercourse; but, if we are to believe them, without success; for an obstacle existed because of the operation. Acts, Volume XXXII, page 380.

[*Latin ed. p. 450*]

450. From the Sacred Council, nothing was omitted. Concerning this matter, a woman, now desiring to consult her conscience and considering the liberty of her husband, who was already fostering adulterous affections with a certain woman devoted to domestic service, instituted a cause of nullity before the Bishop of Muenster, alleging that, lacking genital organs, she was unfit for marriage. The Bishop of Muenster established a tribunal through a delegated judge, and the spouses were questioned, as were midwives who examined the woman's body, and five physicians and surgeons who attended to the woman, among whom the deposition and written report of the aforementioned Doctor Fritsch are noteworthy. From these testimonies, as the Bishop of Muenster stated, the defect of the woman became clearer than the light of day; but it remained doubtful whether, according to the doctrine of the canons, the asserted impediment truly existed; therefore, the Tribunal of Muenster abstained from issuing a definitive judgment and decided to transmit the entire process to the Sacred Council, so that the supreme authority might decide the matter.

Dispute Summarized. "Marriage was instituted," as Damascene says in *De Fide Orthod.*, Book 4, chapter 2, "so that the human race might be preserved through the procreation of children." Therefore, as St. Antoninus states in *Part 3*, title 14, chapter 1, § 6, we must acknowledge that "from the beginning, it was instituted solely for the office of procreating offspring." But with no less certainty, it is known that marriage, "after the sin, also exists as a remedy against the weakness of concupiscence." *Ibid.*, but it is not permitted for spouses to seek the suppression of concupiscence, unless the natural order of human generation is duly observed. Furthermore, the order of generation is perfected in two ways, one of which is called carnal copulation, which is from man, and the other is from the powers of nature,

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and is the conception of a new man. "The earthly parent," as Lactantius says in *De Opificio Dei*, chapter 19, "is nothing other than..."

[*Latin ed. p. 451*]

MONASTERIEN. 451 "Ita enim, cum corpus sensum voluptatis emittat vel recipiat, et hoc opus completum, tunc nasci sibi filios optant, quia non ipsi hoc faciunt; cetera enim iam sunt Dei." In tali itaque statu corporis, in quo est materia generationis, sive per emissionem et receptionem physiologicam viridis seminis, homo lapsus per coniugium habet "remedium concupiscentiae". Si aliae res desiderantur, iam ex imbecillitate et defectu naturae humanae censendum est. Quae particularis imbecillitas vel impotentia concipiendi et generandi, si absoluta et perpetua est, dicitur sterilitas; dum impossibilitas emittendi aut recipiendi semen, impotentia coeundi aut impotentia coniugalis nuncupatur. Iam vero, cum tres distinctae partes apud sexum sequentem genitalem organum essentialiter constent, scilicet vagina, quod nostri vas debitum seu naturale dicunt, uterum seu matricem et ovarios, illa solummodo ad copulam destinata est: Ovaria et uterus ad ulteriora munia generationis creata sunt. Hisce praeactis, vix est cur monemur, juxta sacros canones, minime ex sterilitate, sed ex sola impotentia coeundi impedimentum oriri, ne matrimonium contrahatur, prohibens atque irritans contractum. "Certissimum est," ait Sanchesius (L. VII, disp. 92, n. 26), "sterilitatem nihil obesse valori matrimonii." Quapropter iure et merito, cum, supplici libello porrecto, die 31 octobris 1889, Episcopus Ordinarius Regien, quaesiisset a Sancto Officio: "Num mulier N. N., cui operatione chirurgica ablata sunt duo Ovaria et uterus, admitti possit ad matrimonium contrahendum," ita die 30 Iulii 1890, responsum fuit: "Re mature perpensa, Emi Domini Cardin. Inquisitores Generales decreverunt Matrimonium non esse impediendum." Licet enim ex huiusmodi matrimonio primarius finis excludatur, coniuges tamen ad finem secundarium exinde non efficiuntur impares. Ceteroquin actricem utero carere per accidens, id est, instituta hysterotomia, certo scitum est, cum regulariter et per se hoc periti nonnisi per probabilem coniecturam declarare valeant.

[*Latin ed. p. 452*]

452 FROM THE COUNCIL OF TRENT: "The absence of the uterus, as the author of the *Manuel de médecine légale* states, can be recognized by the introduction of the finger into the vagina... However, the deep location of the uterus does not allow for a sufficiently certain diagnosis to conclude positively that there is impotence." Therefore, the absence of the uterus does not invalidate marriage, nor is it necessary to consider the opposing opinion of experts that a marriage can be dissolved because of this; for doctors hold to the art of medicine, not to canon law. Thus, concerning the defect of the uterus, the marriage of which we are speaking is not invalidated. But what if we consider another defect in one of the

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spouses, which experts have testified to with one voice, namely, that this person has received from nature a vagina which is not entirely open, but is closed off for more than half its length, by a membrane which naturally obstructs it, or "la quale finisce a culo di sacco." Whether such a defect, as it appears to exist in the case of Helen K..., as evidenced by the records of the proceedings, is of such a nature that it prevents a valid marriage, we must now inquire. In ancient times, women with a similar condition were called *atretae* (ατρηταί), meaning imperforate or veiled. (Zacchias, *Quaestiones medico-legales*, Book III, Title I, Question 7, paragraph 24). Many have written about these cases; I will transcribe here only what is necessary for our understanding. It must be known that this occlusion is not of a single type, nor is the impediment always the same, since the membrane in question may be either partially or completely perforated; it may be thin or thick and fleshy; it may be located internally, near the opening of the uterus, or in the middle of the vagina, or near its external opening. The following points should be noted regarding these differences. Hippocrates already observed that women with a veil often conceive, and Zacchias (loc. cit.) explains this by the fact that in these women "a certain narrow opening appears in the middle of the hymen, providing an entrance for the male seed." Similarly, modern authors state: "The obstructing membrane is sometimes incomplete and sometimes complete. The distinction..."

[*Latin ed. p. 453*]

"MONASTERIEN". 455, is of the highest importance with regard to sterility (C. Roubaud). If the unnatural membrane of which we speak is found to be thin, it can be broken with a slight pressure, or even spontaneously: if it is thicker, it can already be incised by modern surgeons without danger: "If the septum is constituted by a hard, thick, callous membrane, the entire extirpation must be performed, an operation which, thanks to the speculum, offers no difficulty." (Ibid.) When the pannus is located in the extreme inner part, the vagina can be penetrated by a man, without recourse to any surgical operation. When the obstruction is located in the middle, the female organ is divided into two parts: "It is a true septum which cuts the vagina in two: an upper part and a lower part." (Ibid.) In this case, unless the hymen is torn, only the anterior part of the organ is destined to receive the man and his seed. But when the external opening of the same organ is obstructed, any penetration of the pannus requires a tearing, so that, until this is done, the man, leaning over, will not ejaculate into the proper organ, or vagina, but within the vulva, or outside the organ. Having received these observations from external sources, namely, from physiologists and surgeons, let us now turn to those things which our theologians and interpreters of the sacred Canons commonly teach. Firstly, it is agreed by all that, among the impediments which legally prevent marriage, only perpetual and antecedent impotence prevents the

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consummation of marriage. Therefore, if we wish to know how the notion of impotence is defined, and what the meaning of consummation necessarily implies, it would be necessary to inquire. But for the present topic, it is helpful to remember this: namely, that, for all, consummation has always been understood as the act by which the man, by penetrating and, as far as necessary, breaking the seal of virginity, penetrates the wife's proper organ, and also pours his seed into it.

[*Latin ed. p. 454*]

454. From the Decretals of the Council, it is indeed stated that the Church has declared such a marriage, after such a union, to have been simply and wholly valid. Truly, from what has been said above, women who are found to have a covering near the womb or in the upper part of the vagina are not prohibited from receiving the male member and seed, nor will they, for this reason, be incapable of consummating their marriage. Nor should a different judgment be rendered concerning those women who have a closed fold within the two labia of the vagina, the anterior part of which the male can penetrate, and into which seed can be emitted. In such a case, it is understood that what is essentially required for the consummation of marriage is present. Indeed, if that covering is not entirely impermeable, the woman may be able to conceive a child from such a union. That the entire male member does not penetrate at that time is to be considered an accidental occurrence. Certainly, for various reasons, the conjugal act is often completed with such incomplete penetration, for example, when the position is more difficult due to the abundance of either one or both spouses, or if the man is found to be excessively fatigued, etc.; nevertheless, never, in such a case, has anyone considered the marriage to be null. However, if we consider what we have transcribed from the testimonies of experts, there is certainly no doubt that the case of the spouses about which we are now considering the cause is similar. Therefore, we cannot affirm that there is any impediment to the marriage due to the defect with which Helena K suffers. However, the accused seems to have contradicted this to some extent, when before the judge he stated, "that the vagina was as if it were not there," so that the seed could not be poured into it; but this testimony should not be given much weight, considering the suspect's own honesty and veracity, the contradictory testimony of the actress, and especially the sworn declarations of the experts, and particularly the statements of D. Fritsch of Bonn, who testified that the penis can penetrate.

[*Latin ed. p. 455*]

MONASTERIEN. The vagina should extend at least twenty centimeters, allowing for easy penetration, and semen should be easily deposited within it. However, if we wish to maintain the integrity of the arguments presented, nothing is revealed that effectively undermines the strength of mar-

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riage. Indeed, the perfect cause and root of impotence, in order to have complete union, must always be found in this skin or preternatural membrane which is stretched over the vagina. It is, in fact, the common doctrine of theologians, especially in cases where there is no question of a naturally closed hymen, which is to be regularly opened by the man, that the woman may, even "with distress and great pain," Sánchez, L. VII, disp. 93, n. 32, undergo an incision, provided that this is not done "with danger, neither of death, nor of serious illness," S. Alph. de Lig. n. 1100. However, such danger is, in general, far removed, as doctors teach, and the surgeon Fritsch openly declared that he himself was able to perform the incision, even in the absence of any danger, although he refused to do so because of the woman's lack of ovaries and uterus, or because of impotence preventing generation; nevertheless, nothing detrimental to the marriage follows from this. For Sánchez, I. c. n. 15, states: "If, according to the judgment of doctors, the impediment to intercourse (due to impotence) is curable without bodily danger, although the woman refuses the incision, the marriage is firm." The reason for this, according to him, is that "its strength and validity depend in no way on the will of the woman (or the surgeon), but on the very nature of the thing, since that impediment is temporary, as it can be removed by art without bodily danger." Therefore, having carefully considered all that we have discussed so far, I believe that the answer to the question: Whether there is a nullity, due to the wife's impotence, in the marriage in question, must be: Negative.

OPINION OF A CANONIST. The Consultor states that there are two questions to be considered and resolved: that of the facts, and that of the law. First, whether there truly exists a defect of the uterus and an imperfection of the vagina; second, whether these two, taken together or separately, constitute an impediment to intercourse.

[*Latin ed. p. 456*]

456 From the Council Decisions: 1. The question of fact: Does a defect of the womb exist? 2. And the question of law: Does an impediment arise from this, which nullifies the marriage? Response: Regarding the first question: Any defect that existed prior to the marriage is a strong indication. a) A sudden breaking off of the betrothal, and, after hearing experts, a fear on the part of the bride that she will not be satisfied by the husband. b) Also a very strong indication is the absence of all menstruation, as experts testify under oath. c) Furthermore, Helena herself confesses, as she received from the Doctors after examination and operation, and the Reverend Fritsch, who performed the surgical procedure, confesses. But in a matter so evident, examined by five experts who, under oath, assert the same defect; it is not permissible to delay further; and therefore, the spouses justly and deservedly renounced the marriage. It is not here proclaimed, as some older writers or even some more recent canonists and moral theologians do,

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that it is very difficult to certainly determine the absence of the womb. The question of law is whether a woman lacking a womb should be considered impotent. For a) according to the testimony of professors of the surgical art, the absence of the womb in a woman can be compared to the state of eunuchs, who lack testicles: but these, according to the declaration of Sixtus V, are frequently to be considered impotent; therefore. b) There is also the authority of canonists and theologians, both ancient and modern, as Cardinal Tarquini states in *Salernitana Matrimonia*, August 1862, no. 11, and Lehmkuhl, who, in the first edition of his *Theologia Moralis*, considers absolute impotence to include not only the total occlusion of the vagina, which prevents the reception of semen, but also that which does not allow it to pass through, as well as the absence of both ovaries and the absence of the womb. Van de Bürgt, in *De Matrimonio*, edition 2, no. 2021, states: "Among the physical defects that, on the part of the woman, impede the act, some are permanent, e.g., the absence of the womb, the vagina..." and so on, so that, as is our common response thus far, c) There is also the support of modern experts, as P. Debreyne states in *Moechialogie*, 2, p. ch. 1. But the testimony of two recent experts is sufficient.

[*Latin ed. p. 457*]

MY ASTERIE*. 457 words; among which is "Le Grand du Saulle et socii, Traité de Médecine légale," published in Paris, in the year 1886, page 108. Let it not be said that these experts do not distinguish between the inability to generate offspring and the inability to have intercourse: and that without a uterus, one can still possess the ability to have intercourse, which is sufficient for the validity of marriage. For, (a) it is well understood that a pure inability to generate offspring, or sterility, is distinct from the inability to have intercourse, a distinction recognized by both ancient experts and canonists, as well as by many more recent ones. I offer the judgment and testimony of one most illustrious man, namely, Joseph Lapponi, Doctor, a most skilled expert in the medical-surgical arts. In the case of Albinganen, concerning the nullity of a marriage, on September 7, 1895, he stated: "Impotenza is the physical inability to engage in regular and effective physiological intercourse; sterility is the inability to conceive. In Roman law, impotence in a man was considered to be the inability to perform those actions which are naturally granted to men (Nov. C. VI, 22, v. c. X, 117). Applying the necessary modifications to this most accurate concept, we must say that a woman is impotent when, with respect to reproductive functions, she is incapable of performing those actions which are given to women by nature. But it is given to a woman to receive intercourse, that is, that set of mechanical acts of sexual intercourse by which a man and a woman can bring the fertilizing element, or sperm, into more or less immediate contact with the female element to be fertilized, the ovum; which, once fertilized, must then develop in the uterus or in its vicinity.

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Therefore, for there to be intercourse in the physiological and natural sense, it is not enough that there be penetration of the, phallus, as is commonly said and repeated; it is also necessary that this penetration be accompanied by such additions that the male prolific fluid, if it exists, can reach the internal cavity of the uterus, and in some cases even more deeply, so that in this place, or at least in its vicinity, the development of the new being can take place during pregnancy. This being the case..."

[*Latin ed. p. 458*]

458 From the *Sacra Concilia* (Holy Councils), it is stated that a woman must be considered to suffer from genital impotence whenever she lacks the organic conditions required for the completion of the entire series of mechanical acts that result in coitus, or physiological sexual intercourse. And after applying this notion of impotence to a case that is very similar to ours, namely, where the uterus is absent and the vagina is diminished, it continues: "The concept that we give of female genital impotence is today accepted by all the most learned and most esteemed modern medical jurists, who all very clearly distinguish it from sterility." Then, the esteemed author cites the authority and words of several recent Doctors: "Furthermore, several experts say that to signify even the impotence of coitus (or of exercising coitus, as nature requires), they use the terms absolute impotence or impossibility of conception, and similar expressions. Thus, for example, *ibid.*, Capelmann continues: "Here, indeed (in the absence of the uterus alone), intercourse can be perfectly accomplished, although it is certain that conception is absolutely impossible. Even an eunuch can sometimes accomplish intercourse with complete pleasure for both parties. In this intercourse, no semen is ejaculated (but only prostatic fluid, etc.), and therefore this intercourse is inherently unfit for procreation. In the absence of the uterus, intercourse is indeed suitable for procreation from the man's side, but not at all from the woman's side." Here, "by nature" and "absolute impossibility" are clearly distinguished from impotence in general, which is different from sterility, and which is sometimes accidental, as in the elderly, in young people not yet mature for conjugal intercourse; in women who, by accident, cannot retain the semen. Furthermore, this absolute impossibility, which prevents procreation by its very nature, does not contradict impotence, as Canonists and Theologians have hitherto understood it. Let St. Ligorius, Doctor of the Church, be an example to all, who in *Theologia Moralis*, n. 1095, defines impotence as that which prevents spouses from having intercourse that is, in itself, suitable for procreation. Indeed, a woman lacking a uterus cannot have intercourse that is, in itself, suitable for procreation.

[*Latin ed. p. 459*]

MONASTERIEN. 459 ratio. Van de Burgt, 1, cap. n. 200. "For, the imped-

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iment to potency is the perpetual and antecedent incapacity of entering into, or completing, the act of copulation, being unsuitable for generation." Thus, almost all canonists, when giving the definition of impotence, always speak of the suitability of the act itself for generation. Hence, the entire apparatus, as they call it, is presumed to be present, as required by nature, although it may, by accident and at least for a time, be disturbed; but if the uterus is absent, the apparatus is completely lacking in substance, so that, from itself, it is entirely impossible to achieve generation. I have said that almost all canonists understand potency or impotence as pertaining to the ability to have copulation, which was also recognized by the Reverend Father Eschbach, *Disputationes physiologicae et theologicae*, cap. 8, art. 1, p. 107. "The third opinion refers only to the act of copulation being, by itself or by its nature, fertile, and not at all to other hidden defects, by which generation is often hindered. And in this sense, the authors of the sacred canons understand impotence." In this matter, it should be noted regarding other hidden defects, that the absence of the uterus is no longer a hidden defect, since, with the progress of surgery, it can be entirely brought to light, as in our case; furthermore, just as the absence of both testicles in a eunuch was a cause of antecedent and perpetual impotence in having such an act, so too is the absence of the uterus in a woman, evident through surgical section. For the uterus in a woman, just as the testicles in a man, are necessary for generation. Indeed, this is demonstrated if the definition is taken according to c. 5, *de Frigid, et Malefic*, so that it is said that impotence is the inability to enter into copulation, by which man and woman become one flesh. Then, many commonly say, but they become one flesh when the semen strikes the ovum, which must at least occur in the uterus; therefore, if the uterus is absent, it is impossible to become one flesh. Cf. Boiler, *Palmieri, Opus theologicum moralis*, note (a) ad n. 1270: who there says: "Indeed, we have already pointed out that the ancients rightly understood that, for generation, a mixture of male semen is required with some element provided by the fe-"

[*Latin ed. p. 460*]

460 FROM THE DECREES OF THE GENERAL COUNCIL: They erred in believing that this element is a feminine seed; for it is the ovum. For it is commonly taught that the power of union is present if the copula can be perfected in the vagina, so that when the semen is absorbed, they become one flesh. Palmieri, in his *Opera Theologica*, I, chapter, notes: "However, a copula is ordinarily required; and the copula is considered perfect when it is suitable for procreation, which requires that the semen be effused. However, it is sufficient for procreation if the semen, effused by the man into the mouth of the vagina, is absorbed by the womb; when absorption has taken place, the copula is considered perfect, and the man and woman are said to have become one flesh." Indeed, this is correct; but

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how can such absorption occur by the womb or uterus if it is absent? For the womb, from which the semen is absorbed, is the uterus. See *Facciati* and medical lexicons, under "matrix." But we have more to consider in our case: especially that in the vagina, namely, such absorption cannot begin, since if the vagina is entirely or at least partially absent, so that neither the copula, by which the man and wife become one flesh, can be perfected, nor can the semen be retained. This will be demonstrated in the second question or part.

Objection: Contrary to what has been said, there is the response of the Holy Office to the question: "Can a woman, N. N., to whom both ovaries and the uterus have been removed by surgical operation, be admitted to marriage?" And after mature deliberation, the Eminents Cardinals Inquisitors decreed that the marriage should not be impeded, on July 30, 1890.

Response: a) This response can be explained in such a way that it is not contrary to us: for it pertains to a specific case, of whose all and individual circumstances we are ignorant; moreover, in morals, even a single circumstance can change the nature of the act. Furthermore, it is reported that it can happen that the physicians themselves may believe that both ovaries have been excised, and that the uterus is entirely absent, but nevertheless some vestige of it, some element of it, remains, which is sufficient for procreation.

[*Latin ed. p. 461*]

MONASTERIEN. 461 to be considered: but in our case, there is no uterus, nor any sufficient element of this kind. Resp. b) Under this suspicion, some trace of a possible impediment, it could justly and legitimately be said that this response was given, especially if something contrary to our opinion is considered by some to be at least externally probable, based on the authority of one or the other modern author. For, in the supposition of a probable opinion regarding the non-existence of an impediment to marriage, the natural right to marriage remains: whether the doubt is of law or of fact, as D'Annibale states (Summa Theologica Moralis, vol. 3, no. 317): "What if there is doubt? (regarding impediments that are diriment impediments...) And if the doubt concerns the law, because a doubtful law has no force, it is fitting that marriage can be contracted, both lawfully and validly. But if the doubt concerns a fact, the more common opinion denies it... the less common opinion affirms it, because those who wish to contract marriage possess the right... I will plainly state what I think. This question only applies to those impediments which are of divine law, that is, the impediment of marriage, consanguinity, and impotence. In the first [case], i.e., in a doubt about the impediment of marriage, the first opinion is the truest... In the third [case], i.e., in a doubt about impotence), to enter into marriage that is subject to divorce, and to completely prohibit someone from marriage, both are publicly harmful; but the latter is far more harmful, both

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in itself, and because the dangers of divorce are lessened where there is no offspring; therefore, I follow the second opinion." Indeed, at the time of this response, Em. D'Annibale belonged to the S. O. S. Office. Furthermore, in the present case, the attempt at intercourse for more than three years (which demonstrates an incurable defect, as we shall hear from experts below) eliminates all semblance of probability of a contrary opinion. Resp. c) Moreover, everyone knows that the Cardinals, who constitute the Sacred College of Rome, act as judges in their decisions and responses, and not as legislators: if they were acting as legislators, they would have to demonstrate that they possess this special concession from the Roman Pontiff to create this or that universal law, and that through such a response or decree, they intend to enact a universal law.

[*Latin ed. p. 462*]

462 FROM THE SACRED CONGREGATION, and which are promulgated with these additions: since they do not manifest in their decisions, it follows that they bind only the recurring parts; and this even more so, if the response is solely and purely in relation to a particular doubt of a bishop. Regarding the matter of D'Annib., book 1, chapter 5, paragraph 1, note 5, where, after saying that "all interpretations proceeding from the Holy Roman Church are authentic, provided they are in the form of a decree and with the clause that they are to be observed," it continues: "Not so those which proceed from other Holy Congregations; and therefore they do not have the force of law unless they have been solemnly published (and not merely issued) by order of the Holy Father, nor do they eliminate the probability of a contrary opinion; nor, therefore, must they necessarily be followed." Hence, it is that the same Holy Congregations have given a contrary response in a similar or almost identical case. Hence, it is that Catholic writers have been able to hold a contrary opinion. And regarding our question, many illustrious Catholic experts hold a contrary opinion, not only, but also schools of Catholic thought are placed before the eyes of the Holy Congregations themselves. An example of all is the Pontifical Historical-Juridical Academy, now located at the seat of St. Apollinaris, established and directed by the authority and expense of the Holy Father, in which the aforementioned Doctor Lapponi, of Leo XIII, has for many years publicly given a completely contrary response to that of the Sacred Office. Furthermore, this academy is one to which the Sacred Congregation for Studies is immediately subject, and which, as if under the vigilance of the Prefect himself, is constituted, and whose professors are appointed or confirmed by the Holy Father himself. That the absence of one uterus constitutes an antecedent and perpetual impotence is not merely an opinion, but a certain judgment, for one who is accustomed to study, both at night and during the day, the classic books of Canonists and physiologists, both ancient and recent. For the sake of abundance, I have discussed the matter

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with the illustrious Doctor and surgeon, Joseph Lapponi, whose opinion the Sacred Congregation has followed in other cases, and who, without any doubt, believes that the defect of one uterus, or a congenital and permanent deficiency, must be considered to certainly cause complete impotence.

[*Latin ed. p. 463*]

NEXT, ARTICLE 465. The practice is as follows: I could present more examples, but it suffices to mention the declaration of nullity issued by the Sacred Congregation of Rites in the case of Albinganen, September 7, 1895, in which the same circumstances are present, with only the names of the spouses changed, so that Anne Gaggero and Francis Amandola, in place of Albinganen and Helen H, and Anthony K, are mentioned in the monastery. The only difference is that in the former case, there was greater certainty regarding the absence of the uterus, which is relevant to our topic, both because of the larger number of doctors involved and because of the more thorough examination conducted by our experts.

However, let us turn to the second cause of impotence, namely, the imperfection of the vagina. We must note, however, that if anyone were to excessively insist on the theories of certain modern theologians or physiologists, they would almost never find evidence of female impotence. For, according to these moderns, it is sufficient for sperm to be introduced into the mouth of the vagina; therefore, there is no reason to consider the absence of the uterus or the imperfection and insufficiency of the vagina for perfect intercourse, which is suitable for procreation. I ask, when could female impotence ever be admitted? The ancients, and many moderns, attributed almost all cases of female impotence to a condition that could not be overcome without sin or a miracle. They spoke of a condition in which the vagina was not properly proportioned for perfect intercourse. This, of course, is not what some modern physiologists and canonists would say, who, without considering any defect in the uterus or vagina, believe that it is sufficient for sperm to be introduced into the mouth of the vulva; because, by that very act, the sperm can be attracted and absorbed, from which they conclude that generation can follow; therefore, they do not admit the possibility of female impotence. However, our predecessors, and the common opinion of canonists and theologians up to our time, considered this matter to be a common occurrence, not a rare case (in which the male organ did not penetrate the female vagina), but rather, based on common occurrences, they required in women a certain conformation of the vagina, such that not only would the insertion of the penis be sufficient, but that a perfect intercourse could be practiced, suitable for procreation.

[*Latin ed. p. 464*]

464 Regarding the reasoning of the Sacred Council: Otherwise, if, according to some, a merely narrow or imperforate opening were sufficient

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to invalidate a marriage, without considering the internal suitability and length of the vagina, almost all declarations of nullity issued by the Sacred Congregation would be overturned due to the height of women and the demands of procreation. Furthermore, Helen is so constricted and imperforate in her ability to have intercourse that she is entirely unsuitable for procreation, as Dr. Fritsch states, because there is no capacity for her to communicate with the uterus, nor is there any uterus through which to reach the ovaries. But the question arises: Is Helen's vagina so abnormal that she cannot be considered virile? Answer: Affirmative: Here, too, a distinction must be carefully made between the factual question of whether an abnormal vagina exists, and the legal question of whether that abnormality constitutes impotence in the eyes of the law. And the answer to both questions is affirmative. First, two difficulties must be addressed: one stemming from the way Dr. Fritsch speaks, and the other from the sworn testimony of the bride. Dr. Fritsch states, indeed, that Helen suffers from the inability to bear children, and he does not even add that intercourse is impossible, which alone would invalidate the marriage. Answer a) Furthermore, the testimony of Dr. Fritsch, a Lutheran, should be viewed with suspicion, because even if it were entirely contrary to the testimony of others; nevertheless, there remain four experts and two midwives who swear to our conclusion and are more than sufficient to prove the matter. But b) Dr. Fritsch supports the same conclusion as the others, namely, that the marriage should not be declared null, and that Helen should be free to give herself to a spouse; although he falsely relies on a foundation expressed in his words to Helen regarding the uterus: "when it is established that a woman cannot have children, then, according to canon law, the marriage is considered as not consummated... The defect of the uterus is sufficient for total inability to bear children. There is therefore a valid reason to declare the marriage null." which demonstrates a lack of knowledge of our law. Therefore, Dr. Fritsch, convinced of this, is entirely focused on proving the inability to bear children. c) However, in the reports...

[*Latin ed. p. 465*]

MONASTERIEN. 465 facts, which she obtained through surgical operation, she affirms, which demonstrate true impotence, namely, the absence of the uterus and the obliteration of the vagina, which completely exclude perfect copulation and suitability for generation. And in § 46, at question 1, she answers affirmatively under oath: "The vagina of the wife K is nothing more than a small, closed sac, five centimeters deep." Similarly, at question 2, she replies: "The formation of the vagina excludes the possibility of it retaining the male seed." Hence, Dr. Fritsch appears to differ from the others, but in fact, he agrees with them in substance and purpose. A further difficulty arises from the woman's side, as she contradicts herself and her husband. For she requests the declaration of nullity on account of her own

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impotence (as Dr. Fritsch advised her, see Uterus); and in her answers, she states that she has consummated the marriage, and that she has engaged in conjugal acts without difficulty, to which the husband, who is under oath, directly asserts the contrary. Response: a) The husband should be believed more than the wife, who does not seem to properly understand what it means to consummate a marriage, or to perform a perfect copulation. b) Furthermore, the woman has always asserted that the male member was only partially introduced, and that the semen could not have been retained. Therefore, the absorption of the seed, by which two become one flesh, could not have occurred. c) If she frequently states that her husband has never been erect; but that that imperfect union has been sufficient for her, this is not surprising, given the love with which he is already attached to his wife, so that in a woman causing infirmity before marriage, he neglected to investigate the matter through honest matrons or experts; and it is not surprising in one who was mingling with Alia. Furthermore, it should be added that after the marriage, he has indeed been erect, but that he cannot procreate a child with his wife: with this expression, they often understand that they cannot have a perfect copulation suitable for generation. Moreover, the spouses do not deny that the vagina is abnormal, in which a perfect copulation cannot occur. "My member," says the record, in Volume XXXII, page CCCLXXX, line 30.

[*Latin ed. p. 466*]

466 From the testimony of the spouses, questioned officially, it could not almost be said that penetration occurred, because the vagina was as if it did not exist. – And to the question, "Could the semen be deposited in the vagina?" she responded: negatively, because it seemed as if it did not exist. The woman herself explains the defect more clearly. "After the operation, a change occurred in me which made the completion of the act more difficult... The male member could only be inserted for a small part." And if, here and elsewhere, when the woman responds, something seems to be said that is not entirely consistent, this is of little importance; and any such opposition is dissolved by the testimony of eight doctors or experts, who examined her, especially by the sworn deposition which, after the examination and operation, was given by Doctors Grassefeld and Gördes, Catholics, Doctor Fritsch, belonging to the Lutheran sect, two midwives, and two other experts, namely Doctors Schödling and Wortmann, also Catholics, and these themselves affirm the evident fact that the vagina is abnormal and insufficient for the completion of coitus. For Doctor Grassefeld stated: "She lacked a vagina of normal formation. Instead, there was a blind passage, so short that one could barely insert the first item of the index finger of the right hand. Therefore, it was impossible to have 'imissio penis,' which is required for coitus." And at point 6, the examination did not reveal that coitus had taken place. And to the question, officially, is

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this defect curable? the response was: negatively. – And does this absolute impotence render coitus with any man impossible? she affirmed. Could the husband find carnal satisfaction with this woman? she added negatively. Not less clearly does Doctor Gördes speak, who, from an ocular inspection, reports at point 5: "There was only an opening of 5 centimeters in depth – a blind passage – which could not be called a normal vagina." And at point 6: "The formation of the vagina, especially due to the shallowness, was so defective that even the 'imissio penis' would necessarily be imperfect... then she adds that the vulva never existed – that this defect preceded the malady."

[*Latin ed. p. 467*]

467 – concerning the condition of *trimonium* – which is incurable – meaning that the union cannot be consummated (with any man) in any perfect manner. And Dr. Fritsch asserts, concerning the substance of the matter, the same thing as others, although he says that the vagina is spacious, and that the union is not impossible; but when he says "spacious," it should be understood in its opening, not in its depth; and if he asserts any possibility of union, it can only be understood as an imperfect one, as we have heard from other experts. This abnormal vagina is affirmed by two midwives and two other experts, Dr. Schoelling and Wortmann. For the sake of brevity, omitting the words of the two midwives, Dr. Schoelling writes in § 66: "According to the examination made by two midwives... concerning the inability of the wife Elena to have intercourse, I believe that the wife herself possesses a very imperfect vagina, in the form of a closed sac, one to one and a half inches long... Considering these facts ascertained by the midwives, I believe that there is an impediment to intercourse in the wife Elena, due to the abnormal vagina, and that a natural and normal union with her is not possible." The following are the words of Dr. Hartmann in § 66: "According to the unanimous judgment of the two midwives, the wife Elena has instead a vagina in the form of a closed sac, about half a finger deep. Such a closed sac is short (the vagina should have a normal length of 14-18 centimeters) and cannot receive the male member. Therefore, a perfect consummation of the union with the wife Elena is not possible. My opinion is therefore this: that one must suppose an inability to have intercourse in the wife herself." Given these circumstances, the solution to the legal question "whether a woman with such a defective vagina is virile?" is easily revealed. Answer: Negatively; first, because of the authority of these experts, whose opinion must be given the greatest weight; and second, because of the doctrine of the Theologians and Canonists, especially of the ancients. For the common doctrine of the Canonists is that it is not sufficient in any way to penetrate the female organ,

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nor to admit semen to some extent, nor is it sufficient...

[*Latin ed. p. 468*]

468 FROM ST. G. CONCILI, a certain imperfect union does not pertain to the making of one flesh between a man and a woman: but a perfect union is required, which, either of itself or by its nature, is suitable for generation. As an example, Schmalzgrueber, in his work *De Frigiditate et Male affectis*, n. 32, teaches that eunuchs cannot validly contract marriage, saying: "The reason is because they cannot emit true seed, although they may perhaps penetrate the natural opening of a woman: consequently, they have an absolute inability to cohere. Furthermore, they cannot fulfill the secondary end of marriage, which is the remedy for concupiscence, for this must be achieved not through any union, but through one that is, by its nature, suitable for the generation of offspring." But the union that Anthony K. has with his wife Helena in her abnormal vagina is not, by its nature, suitable for the generation of offspring. To support his teaching, Schmalz cites many authors, especially Pirhing, Engl, Layman, and Sánchez. Nor is there a lack of authority from modern surgeons and Canonists. Surgeons: as already cited, Joseph B.r Lapponi, who in Albinganen, on September 7, 95, in the case of Anna Gaggero, who is similar to our case, said: "In Nella Gag, there exists indeed a vaginal canal that, after approximately four years of valid and repeated, but always fruitless, attempts at intercourse, was found by Dr. Luigi Fontana, of Finalmarina, to be approximately four centimeters deep, and through a bloody surgical procedure, was brought [to a depth of almost six centimeters, as attested by Dr. Moraglia who later examined the woman. And in this canal, the male organ can penetrate and discharge semen. But such a penetration cannot be considered a true sexual union, a true commixtio carnis; for this occurs only when the prolific fluid of the male unites and mingles with the procreative material of the female. Therefore, that canal represents no more than a half vagina, and terminates in a blind end without communication with the uterus, and may also be associated with di-"

[*Latin ed. p. 469*]

MONASTERY. 469. This condition of the organ, it cannot absolutely permit, and indeed, without a doubt, presents an insurmountable obstacle to the great act of reproduction. Thus, the penetration of the male member into the interior of it constitutes only a semblance of coitus; which in no way can be considered equivalent to a true sexual union; just as, in general, it cannot be considered equivalent to any carnal union contrary to nature, even when performed between a male and a female. And so, several most learned authors, cited by this expert in the art, attest. Canonists: It suffices to have stated the definition of impotence, as given by Saint Patrick in the Decretal, concerning Frigidity and Malefactions: "Impotence is the inabil-

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ity to have a perfect carnal union: and a perfect union is that which, through the emission of male seed into the woman's womb, is capable of producing generation. I said capable of producing: it is not required that it actually produce generation. For impotence is distinguished from sterility. Sterility is held to exist, when even with a complete carnal union, generation is not effected." Furthermore, among the modern theologians already cited, is Van de Burgt, who says: "Impotence is the impediment of an incapacity that is perpetual and preceding, to entering into, or perfecting, a union that is of itself apt for generation." Moreover, in the vagina of Helen, the union is most imperfect, somewhat admitting the seed, but is not of itself capable of producing generation: because that organ of the woman is vitiated; not as nature requires, but in such a way that generation cannot follow from it. Therefore, it is not sufficient that the man has intercourse and emits semen, but it is required that there be a natural organ from which generation can follow. But in the case of Anthony K., he never ceases to assert, under oath, "that my member could scarcely be inserted... that it could not discharge the seed into the vagina... and that he always encountered the same difficulties," which, in his own estimation, are insufficient and inept, and which, as we have seen, are confirmed by the testimony of so many and such experts. Therefore, just as a woman with a congenital defect of the uterus, incurable, is not fit for marriage, so also a woman with such an abnormal vagina, or na-

[*Latin ed. p. 470*]

470. A woman who, from birth, is afflicted with an incurable defect that prevents her from entering into marriage in the manner required by nature, does not possess the power to validly consummate the marriage. I speak of an incurable defect of the uterus, and of an incurable defect of the vagina. For more than three of the aforementioned experts declare such a defect to be incurable. This incurability is understood from the words of the Reverend Fritsch, particularly in response to the first question, "Has the wife, Elena, undergone an operation on her vagina?" and to the second, "Would it have been dangerous to her life to attempt to create a connection between the vagina and the uterus through a surgical incision?" He responds: "Such an attempt would have been a mistake of medical art, a true absurdity. The wife, Elena, did not have a uterus. In the place where the uterus should have been, there was a small body, without a channel, without a cavity... Since the uterus was absent, it was impossible to create a connection with it. In such cases, operations have been performed to lengthen the vagina, and for the purpose of facilitating the man's satisfaction of lust. Medical science cannot have the task of lending itself to such purposes." (Therefore, such a union could not be one in which the woman satisfies the secondary purpose of marriage, which is the calming of concupiscence, since, rather, concupiscence is excited, not calmed, in

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such a vagina. Hence, it is not surprising that men, unfortunately joined to such impotent women or wives, cling to their wives, as did Anthony K. Therefore, once the impotence is proven, the marriage should be declared null.) Finally, to the third question: "Was the vagina formed like a bag, closed at the bottom, so closed as to not even allow the penetration of the male seed?" He responds affirmatively: "The sac terminates solidly, hard, impenetrable, without any trace of an opening. As it is impossible for the male seed to penetrate through the outer skin, so it was impossible for it to pass through that closed vagina." This is confirmed by what Doctor Lapponi affirms in *De Gaggero*, chapter 1: "As..."

[*Latin ed. p. 471*]

MONASTERIEN. 471 Regarding the permanence of the impotence in question, we are assured of this by the very nature of the organic lesion that causes genital impotence. This involves a congenital defect in development, or, assuming the worst possible scenario, a complete morbid destruction of two organs, the vagina and the uterus. This defect, whether congenital or due to complete morbid destruction of organs, cannot be remedied in such a way as to restore the identical missing natural parts, neither by nature nor by art. Not by nature, because in the existence of higher animals, there is no example of organs that, having not formed during the embryonic period, or having been morbidly destroyed later, subsequently form or are renewed during the course of life, especially in adults. Not by art, because no one is unaware that while art may sometimes compensate for or conceal natural defects, it can never create organs in the body of an animal that nature denied. Furthermore, in these circumstances, what remedy can be offered for such an imperfect vagina, if none can be presented by these experts? And let us add that the sacred canons prohibit any remedy from being applied if there is a grave danger of death: and in such a case, marriage must be declared null because of the impotence. But we have heard from experts that a very serious danger threatens Helen, due to an incision made to dilate the vagina, in order to satisfy the husband's lust. Therefore, I stated previously concerning marriage. This defect or vice, if it is congenital, certainly precedes the marriage. And so it is. For Helen herself and her mother, before the marriage, consulted an expert, and some defect was recognized, by which at least the mother could not be helped. The specific nature of this defect is evident from the aforementioned examinations and operations of the experts, who tacitly or expressly affirm that there is a congenital defect of the uterus and of the vagina: expressly, as in § 34, Dr. Graffelder, and in § 37, Dr. Gördes. Regarding Anna Gaggero, (who was found to have the same defect of the uterus and vagina as our Helen), it is

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asserted by the doctor...

[*Latin ed. p. 472*]

472 From the writings of the Most Holy Council concerning the case of Lapponi, we recall the principle applicable to our case: "It must be observed that the anatomical conditions constituting the sexual impotence of the individual in question are congenital; that is, they date from the fetal life. Therefore, they are necessarily prior to the marriage." From the above statements, it is clear that Helen's impotence is not only invincible and incurable, and therefore perpetual, but also absolute with respect to all men, as we have heard from experts, especially Graffelder and Gördes. Furthermore, such an impotence, that is, one that is antecedent, constitutes a diriment impediment to marriage, as is confessed by all. Therefore, the marriage entered into between Anthony K.... and Helen H.... is, without any doubt, null by reason of the impediment of impotence. If anyone still harbors a fear or doubt to the contrary, and, for greater security, wishes to proceed under this imprudent doubt, he will certainly find the marriage to be unconsummated, for the reasons mentioned above, which sufficiently and abundantly prove that the marriage was valid but not consummated, whatever the woman may obstinately assert to the contrary, that she has consummated it, or fulfilled her marital duties... because such assertions cannot destroy a congenital and permanent condition of nature: namely, the absence of a uterus and a defect of the vagina, because these are not as nature requires. Furthermore, all experts, and even the spouses themselves, affirm under oath that the woman lacks a uterus and suffers from a defect of the vagina, such that she cannot have a perfect union: therefore, consummation is not to be admitted. This is consistent with what D.r Lapponi writes in the aforementioned case of Albinganen: "In the face of an impotence of this kind, it is necessary to consider whether, in the case in question, there was or was not consummation of the marriage? - It does not seem so to me - rather, it seems that the opposite must be said; since this question has already been implicitly answered by the considerations previously developed. But, if one were to insist..."

[*Latin ed. p. 473*]

473. MONASTERY. Regarding this matter, we can observe that no individual can perform any act of the generative function if they lack the necessary organs to carry it out. Furthermore, Helen lacks two essential organs for consummation, just as Anne Gaggero, whom the esteemed Lapponi praised, lacked them: "for she possesses only a half of a vagina, ending in a blind end without any outlet; and she is entirely devoid of a uterus, or at least has a uterus that is unusable. Therefore, Anne Gaggero could not, and cannot, perform the functions necessary for the consummation of marriage." And since this case of Anne Gaggero, as I have said many times,

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is analogous to ours, we can apply the words of that same doctor to Helen and Anthony K: "To suppose that in the case in question, there was only the possibility of a consummation of marriage, is the same as to think that one who was born without lower limbs can walk; that one who is lacking these organs can grasp an object with his hands; and that one who is missing eyes, ears, or a nose from birth can, in some way, see the light, or hear sounds, or perceive odors. This means that it is the same as supposing a physically absurd fact, and therefore unworthy of any discussion." If, however, someone were to request just causes for a dispensation, the following are available: 1. The good or eternal salvation of the man, who, as we have seen above, cannot satisfy, either primarily or secondarily, through the most imperfect union; so that rather than satisfaction or appeasement of concupiscence, his union is more like an irritation. Hence, it is not surprising that Anthony K has, for several years, been in a carnal relationship with a woman who is not his wife. 2. Another reason is the jealousy and aversion of the woman towards her husband, and finally, 3. the very impotence itself, if it were even only probable. OBSERVATIONS OF THE DEFENDER REGARDING THE MARRIAGE BETWEEN HELEN H. AND ANTONY K, FROM THE POINT OF VIEW OF MATRIMONIAL OFFICE.

[*Latin ed. p. 474*]

474 From the Acts of the Sacred Congregation, dated April 19, 1887, which commenced on the day of March 18 of the preceding year; and concerning the written doubt diligently presented, the Most Reverend Congregation has responded as follows: Deferred. However, after further deliberation on this matter, I have no doubt that a response will be given to the written request: Negative. For those clouds, by which the decency of conjugal intercourse, without hope of procreation, and therefore the value of marriage, had been obscured, have completely dissipated after the votes of the consultors. Someone might ask, does this eminent canonist truly consider the marriage in question to be invalid, because the vagina of Helen is "not longer (according to the consultor) than 4 or 5 centimeters" – while he states that "the normal length varies between 14 and 18 centimeters" – and is "completely occluded in its innermost recesses." First of all, I observe that the abnormality of the vagina is not what the consultor believes it to be. For it has been proven that the vagina of Helen is not shorter than 5 centimeters, according to the reports of the physicians. Furthermore, the normal length of the vagina does not, as the consultor stated, vary between 14 and 18 centimeters (as stated by the physician Hartmann in *Synopsis*, page 14), but the eminent expert in the healing arts, Topai, teaches: "Legendre says that the vagina can be from 5 centimeters and 2 millimeters to 9 centimeters and a half, and Richet speaks of cases in which the vagina is longer than normal, and adds: 'We encounter some of those (which means, equally, an exception, not a rarity) in which the cervix of the uterus is no more than

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4 or 5 centimeters from the opening of the vulva.'" Beaunis and Bouchard state that the anterior portion is 6 and a half centimeters and the posterior portion is 8 centimeters. Tillaux assigns, on average, half a centimeter more to the anterior portion." Then, if the esteemed canonist is correct in concluding the nullity of the marriage based on the aforementioned shortness and occlusion of the vagina, he certainly contradicts the truth when he defends the value of marriage.

[*Latin ed. p. 475*]

MONASTERIEN. 475 "Quia, ut dixit, ius canonicum, sicut patet ex titulis II *De desp. inipub.*; XVI *de consang. et affin.*; X.V *de frig. et malef.*, cognoscit virum, qui seminare valeat intra vas mulieris, et mulierem quae non sit arcta viro, quin aliud exigat. Hinc, ut omnes sciunt, interpretes decretalium aliam impotentiam in feminis coeundi non intelligunt praeter arctationem." Sánchez De matrim. lib. 7, disp. 92, n. 1, 22, cum communi. Neminem decepit canonista, dummodo haec scripsit. Sed quaero, si brevis vagina et occlusio in interiori parte impediant, praeter generationem, ipsam concupiscentiae sedationem. Contradictor reicit: "Si vagina brevis quidem sed *pervia* sit, uterque matrimonii finis possibilis est: at non ita si, ut in casu nostro, sit valde brevis et occlusa; tunc enim deficit evidenter finis primarius ratione occlusionis, et simul secundarius ob insufficientem penetrationem." Praemitto vaginam in casu nostro haud esse valde brevem, sicut demonstravimus supra %%4 et 5, et addo, quidquid sit de fine primario, nempe generatione, certum est, in casu nostro non deficere finem secundarium, sedationem scilicet concupiscentiae. Nam occlusio est in vaginae parte interiori, seu, ut ipse admittit: "vagina occlusa est in sua interiori extremitate; *pervia* tamen est per totam suam longitudinem 5 centimetris." "Essendo stata possibile l'immissione del pene" (concludit medicus Gördes), "non vi è impotentia, impossibilitas coeundi, bensì impotentia gestandi." Quocirca iure optimo merito peritus Topai vaginae occlusionem non urget, quia perspicuum est nullum obstaculum parari sedationi concupiscentiae "dal fondo cieco della vagina." Sed vero iudicare num "vagina spaziosa abbastanza, lunghezza 5 centimetri senza apertura nel fondo" apta sit ad sedandam concupiscentiam, pertinet, nisi me ipse fallo, ad viros in scientia medica potius quam in SS. Canonibus peritos. Dimisso itaque eximio canonista, audiamus peritissimum consultorem medicum.

[*Latin ed. p. 476*]

476 FROM THE SACRED COUNCIL. Now, this [person] states: "It was demonstrated, with the testimony of three physicians and two midwives, that Lady Elena H had a vagina no more than five centimeters deep and perfectly closed at the bottom. Upon examining Lady Elena, even under anesthesia, it was not possible to ascertain the presence of the uterus, beyond the blind end of the vagina; the absence of the uterus, which was

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subsequently confirmed by direct observation or through the operation she underwent. Therefore, from the condition of Lady Elena H, even before and without the observation made during the operative act, two facts were noted: the shortness of the vagina and the condition of its fundus, namely, the absence of the uterus. Now, the first abnormality, contrary to what might appear at first glance, is not an element upon which the resolution of the question should be based, namely, whether or not the marriage was consummated."

"For, if the fundus of the vagina had been normal, or at least if it did not appear to be so, and if it could not be demonstrated with certainty through physical examination that there was an absolute impediment to the penetration of the seminal fluid into the organs proper for generation, then I believe that the act of copulation should be judged sufficient, as stated by Dr. Fritsch, who examined and operated on Elena K..., and therefore the marriage should be considered consummated."

"In the work of Maschka (already cited), it is read that Lissner saw a case similar to this one, the only difference being that the depth of the vagina was even less, and, nevertheless, the act of copulation had been frequently practiced. The woman had become a widow at 35 years of age, after 13 years of a peaceful marriage. Furthermore, Legendre states that the vagina can be from 5 centimeters and 2 millimeters to 9 centimeters and a half, and Richet speaks of cases in which the vagina is longer than normal, and adds: 'One encounters cases in which the cervix of the uterus is no more than 4 or 5 centimeters from the vaginal opening.' Beaunis and Bouchard state that the anterior part is 6 and a half centimeters and the posterior part is 8 centimeters. Tillaux assigns, on average, half a centimeter more to the anterior part. Can the vagina, in exceptional cases..."

[*Latin ed. p. 477*]

MONASTERIEN 477, it can certainly exist and, with time, may reach a greater length, but it cannot be said, as Bartolini states, "that its length is commonly eight or seven digits." "Indeed, no author of forensic medicine establishes a minimum depth that the vagina must have, and moreover, there is no discussion regarding the potential for coitus solely based on the decrease in its depth. Certainly, no one would dare to question the man's potency when, because he is very stout, or because of the shortness of his member, its tip remains more or less distant from the bottom of the vagina during coitus. "Furthermore, it is not easy to say whether and to what extent the anomaly of a shallow vagina could be considered in relation to the degree of sensual satisfaction it provides, but it must certainly be such as to present the sufficient conditions for the proper consummation of the act of generation. "Moreover, with regard to this second part of the work, which completes the assessment of this important anomaly, it is appropriate to add that it is quite different to consider the most favorable

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condition from every point of view, than it is to establish the minimum necessary for a satisfactory and effective union. "Therefore, from the woman's side, it is required that the member can penetrate beyond the entrance of the vagina, marked by the line of implantation of the hymen, to the extent necessary for the semen to be deposited, and it is required that the male semen, once deposited, is likely to penetrate, even in a very small part, into the uterus. And this can certainly occur, even if it seems that the semen has not been retained; indeed, pregnancy has occurred several times through the passage of a few spermatozoa through the foramen of the hymen, while it was still intact. These are evidently the two conditions equally necessary for the consummation of marriage to occur, nor are they less required because they are indispensable, nor more because they are sufficient to ensure its completion.

[*Latin ed. p. 478*]

478 From the records: The principal aim of the Council is to achieve both the intended end and the appeasement of concupiscence. Therefore, it is not necessary to dwell further on generalities, but rather to examine the matter in concreto. "And considering the specific case, it seems to me that it cannot be asserted that the brevity of the lady Elena's vagina, in itself, constitutes an absolute cause of impotence for the act of copulation. Indeed, who could maintain that the penetration of the male member for five centimeters into the vagina is insufficient even to appease the lust? And who could say that, even when the prolific fluid is discharged into a vestibule of such limited depth, conception is impossible, when it has occurred on several occasions even with an intact hymen? "Therefore, based on the aforementioned considerations, the medical examiner, at least, cannot, in the absence of a certain and perpetual fact constituting the principal and essential purpose of marriage, or disregarding it, judge of a lack of consummation and therefore of nullity, based on, which, by itself, is far from being a valid and reliable basis, the defect in the length of the vagina. It is, however, evident that the conditions of Lady Elena H allow for an affirmative or negative resolution of the question, according to the concept that is held or deemed admissible regarding normal intercourse, and, respectively, regarding the true consummation of the marriage. "Indeed, if the copula is to be considered perfect and the true consummation of the marriage is to be admitted, even when, on the part of the woman (since it is of her that we are speaking), due to a pre-existing, absolute, and perpetual condition, she can only have the effect of appeasing the lust; since this purpose could be sufficiently achieved, it should be admitted that between Mr. Anthony K and Lady Elena H, the marriage was consummated." To conclude: the fate of the marriage in question depends on the resolution of two questions: namely, 1. Whether conjugal intercourse without the hope of offspring is permissible; 2. Whether a vagina that is not longer than 5

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centimeters and "completely closed" is sufficient.

[*Latin ed. p. 479*]

MONASTERYMEN. 479 concerns the matter of appeasing concupiscence. To the first question, the canonist consultant answers affirmatively, to which the physician objects; to the second question, the physician answers affirmatively, with the canonist dissenting. The principles for resolving the first question are readily provided by the sacred canons, while the principles for resolving the second are provided by the medical art. I implore you, Most Reverend Fathers, to follow the canonist while he interprets the canons, and to listen to the physician when the physician speaks. After what has been debated by the distinguished theological consultant, to which I fully adhere, only one thing remains for me: to point out that the most learned canonist unjustly believes that the present controversy has not been resolved by the Sacred Congregation of the Holy Office, since that Congregation, in response to a bishop's inquiry: "Can the woman N. N., to whom a surgical operation has removed both ovaries and the uterus, be admitted to contracting marriage?" on July 30, 1890, responded: "After mature deliberation, the Most Eminent Cardinals Inquisitors General have decreed that the marriage should not be impeded." Indeed, between the case presented to the S.C. S.O. and our controversy, I see no difference other than that there, the matter concerned contracting marriage, while here, it concerns a contract. Certainly, in contracting marriage, the most common saying holds: "In doubt, the safer course is to be chosen," requiring both the sanctity of the Sacrament, which must not be exposed to the danger of nullity, and the nature of the contract; for it is unjust that one of the contracting parties should be bound to a certain obligation, when it is uncertain whether that party can fulfill the obligation itself. But the situation is quite different when it is a matter of a marriage already contracted. For this is not dissolved unless there is certain nullity, as is evident from the very wording of the formula expressing doubt: "Does a nullity of marriage exist?" Nor does the excellent objector invalidate that decree when he claims that it lacks legitimate promulgation, and that it is perfectly permissible for the Holy Congregations to decide differently in a similar or almost identical case. For the Cardinals, by that decree, defined what...

[*Latin ed. p. 480*]

480 FROM the decree of the Holy Council concerning the law of nature, which binds all and every person immediately and in every way, once it has come to their knowledge, without any need for special promulgation. It is clear to everyone's understanding how absurd it is to require, for a valid marriage from the woman's physical side, anything other than a narrow vagina, according to St. O. [the Holy Office]; while, conversely, it is

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sufficient to not have a narrow vagina, according to the Congregation of the Office. However, I believe that those who speak of the shortness of the vagina are mistaken. For the Decretals do not mention a short vagina, but a narrow one, which prevents the true union, as an impediment to marriage. Furthermore, this is sufficient for the matter at hand, according to the opinion of the most learned consultant theologian. Having considered these points, the following questions were proposed: I. Does nullity of marriage exist in this case? And, if not: II. Should [one] consult with the Most Holy [authority] regarding a dispensation for a marriage that has been consummated in this case?

RESOLUTION. After discussing the matter, the Holy Council, on December 16, 1899, decided to respond as follows: To I: Affirmative, the woman is prohibited from entering into other marriages. To II: Provision is made in the first [response].

[*Latin ed. p. 481*]

481 FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF ROERMOND. DECREE of the 10th of March, S. E. U. CREDIT 1899. SUMMARY OF FACTS. In the year 1875, the Sisters of the Perpetual Adoration were expelled from the Kingdom of Prussia by the infamous laws known as the *Kulturkampf*, and they went into exile in Holland, where they founded a monastery called Nazareth in the province of Tegelem, in the diocese of Roermond. The Superior, Sister Maria Josephina, Countess de Fürstenberg, had already donated to the new monastery a sum of 128,000 marks (160,000 guilders), which she had inherited from her father since the year 1859; this endowment was further composed of 80,000 marks in dowries of the sisters, 800 marks given annually by benefactors, and 6,000 marks in interest on a loan. When the unjust laws of the *Kulturkampf* were repealed in Germany, the Superior de Fürstenberg requested from the Most Reverend Archbishop of Cologne permission to establish a new monastery in that city. Before granting the requested permission, the Archbishop wished to be informed concerning the resources available for establishing and maintaining the new monastery. The community of Tegelem, legitimately assembled on the 16th of October, 1890, responded that it would retain all the goods it possessed and would only cede the following for the establishment of the new monastery: 800 marks which were received annually from pious benefactors, the interest of 6,000 marks from the loan mentioned above, and the sum of 5,677 marks which the Superior de Fürstenberg had received that year from her mother; furthermore, Maria Josephina, who later also became Superior of another monastery, remained free to dispose of her maternal inheritance. Acts, Vol. XXXII, page

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[*Latin ed. p. 482*]

482 FROM THE CHURCH LAWS, EPISTLES, AND RULES. Towards the end of the year 1890, a new monastery began to be established in the city of Cologne, by acquiring there a small and narrow house. In the following year, 1891, the mortal life of Sister Mary Joseph of Fürstenberg came to an end, to whom the inheritance from her mother amounted to 500,000 marks. This sum initially remained with her brother, who, however, regularly received the profits from it, as determined by the Superior of Fürstenberg. In the year 1892, the aforementioned brother paid to his sister residing in Cologne, and to the Superior of both monasteries, a portion of the sum amounting to 107,719 marks, which this latter sum was transmitted to the Community of Tegelem, in order that it might be invested in public funds. Two years later, the new Superior of the Monastery of Tegelem, Lady of Fürstenberg, who had remained the sole Superior of the Monastery of Cologne, requested the Community of Tegelem to return the sum of 100,000 marks, with the remaining sum of 7,719 marks having been spent by the aforementioned community with the permission of the aforementioned Lady of Fürstenberg. The Monastery of Tegelem denied the restitution, alleging that the sum requested had been given to them as a donation; while, on the other hand, it was observed that the aforementioned sum had been delivered only as a deposit. A summary of the arguments: FOR THE MONASTERY OF COLOGNE. Firstly, the Advocate observes, if the construction of this monastery was permitted by the Archbishop of Cologne, it was because the necessary funds had already been provided, either for its erection or for its maintenance. However, the allocations made in the year 1890 by the Monastery of Tegelem for the endowment of the new monastery were entirely insufficient. Hence, it was necessary to have recourse to the inheritance from her mother, which Lady of Fürstenberg was about to receive, and over which she was free to dispose, as had been stipulated in the meeting of the Chapter of the Sisters of Tegelem in the month of October, in the year 1890; therefore, this condition was linked to the Archbishop of Cologne's consent for the construction of the new monastery. Furthermore, the first installment of the inheritance from her mother, amounting to 107,719 marks, which was paid by the brother of Lady of Fürstenberg in the year 1892,

[*Latin ed. p. 483*]

RUREMUNDEN. 485 The Monastery of Tegelem, in order that it might be endowed with funds from public resources, undertook this action because the taxes in Holland for such endowments were lower, and the security of the investment was greater there than in Colonia within the Prussian kingdom; furthermore, the funds received from other sources were entirely

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insufficient for the acquisition of property and the commencement of construction for the new monastery, and therefore, the funds were transferred to the Monastery of Tegelem. Moreover, the advocate argues: if the aforementioned sum was truly a donation, why did the nuns of the Monastery of Tegelem request the Lady of Fürstenberg to allow her to freely dispose of a portion of it, namely 7,719 marks, to pay off debts? Furthermore, it should not be objected that the sum of 100,000 marks was recorded in the active accounts of the Monastery of Tegelem; for the Archbishop of Colonia replies: "The intention of the giver, and not the recipient, must be considered, taking into account the circumstances in which the Prioress (Lady of Fürstenberg) was then situated, and the circumstances surrounding the transfer of that sum to Tegelem from Colonia." Therefore, the recording of the aforementioned sum in the active accounts does not prove the intention of the Prioress to donate; indeed, even if such an intention had existed, the donation should be considered null and void, as it was made without the consent of the Archbishop of Colonia. The advocate derives a second argument from a deposition given by the Superior, Lady of Fürstenberg, before the Reverend Commissioner of the Archbishop of Colonia, and from another declaration made by her shortly before her death, namely, that she never intended to bequeath the materna inheritance to the Monastery of Tegelem: this declaration was confirmed by the testimony of three nuns, who stated that the Superior had repeatedly declared that the materna property should be transferred to the Monastery of Colonia. Then, the advocate seeks to demonstrate two subsequent facts. The brother of the Superior had deposited with him the sum of 128,000 marks; in the year 1894, or shortly before her death (for she died in the year 1895), the Superior of Fürstenberg sent only a small amount to the Monastery of Tegelem.

[*Latin ed. p. 484*]

484 FROM S.C. EPISCOPAL AND REGULAR, item 28,000 marks, because he refused to restore 100,000 marks of the maternal inheritance, and he added the remaining profits, with the relative sum to the principal, to the monastery of Cologne. Another matter was that the parish priest of Tegelem, acting as the ecclesiastical representative for the monastery, wrote to the Superior as follows: "Let the sum of 100,000 marks (of the maternal inheritance) which is deposited here with us, and our sum of 100,000 marks which is deposited there (with the brother residing in Cologne), remain with you. Therefore, it remains for you to pay us the sum of 28,000 marks. Finally, the defender observes that for the purchase of the area, for the construction of the monastery building in Cologne, and for inheritance taxes, expenses of 353,947.50 marks were incurred; hence, only 146,952.50 marks remained from the maternal inheritance. The monastery consists of 40 sisters, and its endowment, including the 100,000 marks, amounts to a sum of 222,100 marks, of which the annual revenue is 10,180 marks; if all

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of this is taken into account, the daily allowance of each sister would be made up of 70 centimes, with which it is impossible to live decently in the city of Cologne. Therefore, the defender concludes with the Archbishop of Cologne that the sum of 100,000 marks is absolutely necessary for the existence of the monastery. On the contrary, the monastery of Tegelem contains 33 sisters, and its endowment is considered to be 168,000 marks, not including the disputed 100,000 marks; including these, its patrimony would amount to 268,000 marks for the support of only 33 sisters in the city of Tegelem, where provisions are sold at a lower price and the taxes are milder than in the city of Cologne. Therefore, it is also equitable that the disputed 100,000 marks should be assigned to the monastery of Cologne. Having stated the above, he recalls in law with Cardinal de Luca, in *De Donationibus*, p. 1, Lib. 7, disc. 16, that in a donation, it is required that there be a clear and conclusive proof of a perfect and determined intention to give, irrevocably inter vivos, because to give is to lose.

[*Latin ed. p. 485*]

ROERMOND. 485. Hence, it cannot be presumed that this action was undertaken without a valid reason. Indeed, these principles perfectly apply to the case concerning the Monastery of Cologne. For the Archbishop of Cologne consented to the construction or establishment of a new monastery, on the condition that the Monastery of Tegelen provide the necessary endowment. The Monastery of Tegelen, in a chapter meeting, with the approval of the Bishop of Roermond, declared that it would reserve for itself all property possessed, including 128,000 marks of the inheritance of the Superior of Fürstenberg, and granted her the faculty to freely dispose of the future inheritance in favor of the new monastery. Therefore, the Archbishop of Cologne acquired the right to prevent the aforementioned inheritance from being alienated by the new monastery; thus, even if the Superior of Fürstenberg wished to donate the disputed portion of the inheritance, she could not accomplish this without the consent of the Archbishop of Cologne, who admitted the sisters into his diocese only with a view to the aforementioned agreement, which was approved by both the chapter of the Monastery of Tegelen and by the Bishop of Roermond, as the Archbishop himself testifies in letters addressed to the Sacred Congregation, dated October 8th, 1897.

CONCERNING THE MONASTERY OF TEGELEN, COMMONLY CALLED OF NAZARETH.

Against this, the Visitor of the Monastery of Tegelen contends that the disputed sum of 190,000 marks was truly donated. Firstly, he alleges the testimony of the Vice-Priress of said monastery. In the year 1892, the aforementioned sum was sent from the Superior of the Monastery of Cologne to

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the Monastery of Tegelen by means of a certain sister; the Vice-Priress, having convened the nuns in a chapter meeting, testified that she had received it from the generosity of the Superior of Fürstenberg. Indeed, according to the Visitor of the Monastery, this acceptance of the donation is evident, and this is further strengthened by the fact that, when a newly elected Superior of the Monastery of Tegelen one day spoke with the Commissioner of the Monastery of Cologne, alleging that the aforementioned sum was being taken from her, the Commissioner of the Monastery of Tegelen replied: "This is not just; once given, it always remains given."

[*Latin ed. p. 486*]

486 FROM THE MOST HOLY FATHER, BISHOP AND REGULATOR. Another argument the Visitor derives from the fact that the aforementioned sum is found described in the code of the active part of the Monastery of Tegula: this document was signed not only by several nuns of said monastery, but also by the Commissary of the Bishop of Roermond, and even by the Superior herself of Fürstenberg. It could certainly not be explained how said sum could form part of the assets of the monastery, if it had not, in fact, been donated. The Visitor attempts to infer this to support his claim from two letters which are said to have been written by the Superior of Fürstenberg; one to the new Mistress of the Monastery of Tegula, and the other to another sister of the same monastery: but these letters are not presented in the records. Finally, the Visitor, having described the serious family difficulties which would befall the Monastery of Tegula due to the restitution of the disputed sum of 100,000 marks, proceeds with a more forceful pen to refute what has been presented on the contrary, asserting that neither the Bishop of Roermond consented to the Superior of Fürstenberg assigning the maternal inheritance to the Monastery of Cologne, nor could the Most Reverend Archbishop of Cologne have prevented the aforementioned inheritance from being assigned to the Monastery of Tegula. Having thus briefly presented the arguments from both sides, the following question was to be resolved: Whether the Monastery of Tegula is obligated to restore 100,000 marks to the Monastery of Cologne in this case? RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after carefully discussing the rights of the parties, on March 10, 1899, decreed: Affirmative, and furthermore.

[*Latin ed. p. 487*]

INSTRUCTION 487: Concerning Episcopal Congregations within the Dioceses of Austria. In order that "the system of episcopal congregations may flourish more firmly and effectively" in the Cisleithanian regions, already established and prescribed by Pontifical documents dated March 3, 1891, addressed to all the prelates of the Austrian Empire, the Most

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Holy Pope Leo XIII, through divine Providence, having seen that his Apostolic solicitude and charity for this matter have continued to grow, has deigned to confirm and approve [the existing system], and has decided to add further provisions, and this Sacred Congregation of Bishops and Regular Canons has decreed that these should be communicated to all the Ordinaries of Lower Austria: as follows:

I. Furthermore, each year, and more frequently if the circumstances or necessity require it, all the Archbishops and Bishops of the Austrian Empire shall convene in Vienna, to deliberate together on the common interests and affairs of their churches, and to act jointly on matters pertaining to relations with the civil authorities.

II. Seven prelates, chosen by full suffrage to form a permanent Council, shall also convene twice each year in Vienna, to prepare matters for deliberation by the full assembly, and to carry out the mandates of that assembly. The acts of the sessions, whether of the general assembly or of the permanent Council, shall be communicated in writing to the Bishops.

III. Furthermore, the Archbishops and Bishops of each ecclesiastical province or civil jurisdiction shall, each year, meet within their respective province or region, in order to act in concert on the most pressing matters concerning their churches. For the celebration of these annual gatherings within the provinces or regions, the regulations concerning the congregations, by which the Bishops are bound to be present each year, will define the appropriate occasion, the suitable venue, and the order in which the prelates shall be assembled.

IV. The convocation and moderation of the assemblies of Bishops, whether general or particular, shall be undertaken by the Bishop who, among those attending, holds the highest rank and seniority in the ecclesiastical hierarchy; and all shall be bound to obey him in all matters pertaining to the assembly. The Secretary shall be the one designated by the Bishops through their vote.

V. The following matters shall be presented for deliberation at these assemblies: — the Christian instruction and education of the people, and the training of youth.

[*Latin ed. p. 488*]

488 FROM the Decrees of the Holy General Council and of the Regulations: the closer union of the faithful with their pastors; the cultivation and growth of seminaries; the erection of a Catholic University; the preparation and joint publication of a catechism by the Bishops (Brief of Pope Pius IX, October 5, 1855); the protection of the rights and goods of the Church; the vigorous defense of the supreme authority and liberty of the Supreme Pontiff; the care of periodicals and other publications; the religiousness and sanctity of Christian marriage; the improvement of the discipline of nuns

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and of both religious orders; associations of laymen useful for promoting piety and charity; the inviolable observance of feasts; the promotion of uniformity in the Roman liturgy; the restoration of diocesan visitations and synods, according to the laws of the Council of Trent; the new or improved infusion of Christian life into all orders of citizens; concern for the condition of workers, farmers, and emigrants; the study of social, and popular causes; the religious instruction of soldiers; the strengthening of the Petrine foundation; the provision of assistance to sacred missions and to the abolition of slavery; public documents or acts, to be published with the unanimous counsel of pastors, for the benefit of both spiritual and civil affairs; and finally, other matters of this kind, for which it has been thoroughly demonstrated that complete agreement in action and sentiment is absolutely necessary. VI. The propositions and resolutions of the assemblies, at least the more important ones, shall be carefully presented to the Apostolic See by their president, so that the assembly of Bishops, whether by itself or through its legate residing at the Imperial Court, may intend to assist with counsel and action. It is certainly believed that His Holiness will urge all the Ordinaries of the Austrian territories to observe these statutes and resolutions with the utmost willingness and zeal: and in this way, they themselves will also merit the best for religion and for the state, and their assemblies will produce those happy results which, with God's help, are happily brought about day by day in other regions. Given at Rome, from the Secretariat of the Holy Congregation of Bishops and Regulars, on July 22, 1898. S. CARD. VANNUTELLI, Prefect. A. TROMBETTA, Secretary.

[*Latin ed. p. 489*]

489 FROM THE HOLY CONGREGATION OF RITES IN BURDIGALA. Concerning the beatification and canonization of the venerable Servant of God, Joan of Lestonnac, foundress of the Order of the Daughters of the Blessed Virgin Mary. REGARDING A DOUBT: What miracles are to be considered in this case, and what is the effect of which we are speaking? The Lord sends laborers into His vineyard not only to men at opportune times, but also to strong women, of whom it is written in the Book of Wisdom: "She hath girded her loins with strength, and hath strengthened her arm." Examples of this can be found in Bridget, Catherine Flisca, Joan Francisca Fremiot de Chantal, and the illustrious Francis, and many other most holy women, who not only sought their own salvation, but also that of their neighbors. Joan of Lestonnac deserves to be included among these. She herself planted a vineyard in the Lord's field, establishing a new order of pious women, which Our Lady wished to be called by Her name. Joan was born in the year 1536, of a noble family. From her earliest years, she shone with such virtues that it was easy to foresee the height of her future sanctity. However, her adolescence demands even greater praise, because the times were so unfavorable. She lived during a time when the Calvinist

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plague was ravaging France, posing great danger to Catholics. Not only did examples of public defection confront the girl's eyes, but also domestic ones. For her own mother, having begun to study the doctrines and errors of Calvin, created daily danger for her daughter, increasing her fear that she, captivated by her mother's persuasions, might sometimes yield. But, with the protection of divine grace, which she diligently sought to merit through constant piety, she escaped unharmed, and began to consider entering a religious community to embrace a more perfect way of life; and she would have done so immediately, had it not been for the will of her father, who gave her in marriage to a most noble man. After her husband's death, she returned to her former intentions, and entered a house of piety in Toulouse.

[*Latin ed. p. 490*]

490 FROM THE CONSTITUTIONS concerning women who are commonly called "Fogliantinae." But she soon perceived that she was divinely called to another work, namely, the founding of a new Congregation of women, dedicated to the entire care of young girls, so that they might be properly instructed in the sanctity of life, joined with the integrity of doctrine; a most opportune defense against the errors that were encroaching. This undertaking, indeed, grew so rapidly and happily that she herself witnessed, while still living, thirty houses of her Order being established. Thus, joined to the most sacred ministry for the salvation of young girls, she departed this life in Bordeaux, the day after the Kalends of February, in the year 1640, having reached the age of eighty-five years. Her reputation for sanctity, confirmed by miracles, flourished in France, until, through the efforts of many, it was obtained in the year 1826 from the Apostolic See that she might be honored with the title of Venerable. At the same time, her cause was begun before the Congregation of Sacred Rites; and after legal proceedings were duly conducted, her virtues were declared to have reached the heroic degree by a solemn decree in the year 1891. When three miracles were attributed to the intercession of the same Venerable Servant of God, a formal investigation was instituted; first, in the preparatory meeting, held on the fourth of the Nonates of May in the year 1897, convened by the Reverend Cardinal Lucido Maria Parocchi, the Relator of the cause; then, with the matter raised in the preparatory assembly convened at the Vatican on the ninth of the Kalends of February in the year 1898; finally, in the general assembly before His Holiness Pope Leo XIII in the Vatican halls, the day after the Nonates of December of the following year, in which the same Reverend Cardinal Lucido Maria Parocchi proposed the question: "Concerning which miracles does it consist, and to what effect, in the case under consideration?" The Reverend Prefects of the Sacred Rites and the Reverend Consultors gave their votes. The Most Holy Father postponed giving his judgment, deeming it necessary to allow time

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for prayer; and He declared that He hoped to soon pronounce a judgment in full agreement with the sentiments of the Reverend Cardinals and the Reverend Consultors. Therefore, on this day, which is the third Sunday after Epiphany, the day on which the Feast of the Holy Family of Jesus, Mary, and Joseph is devoutly celebrated, after the sacred Mysteries had been piously celebrated, he entered the solemn hall of the Vatican, and ordered the Reverend Cardinals Camillo Mazzella, Bishop of Praeneste, Prefect of the Sacred Congregation, and Lucido Maria Parocchi, Bishop of Por-

[*Latin ed. p. 491*]

From the Sacred Rites [Congregation], numbers 491 and 492, the Most Reverend [Cardinal] Praenestinus, Prefect, and the Most Reverend Rufinus, Prelate appointed by a Papal Brief, together with the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, and myself, from the Secretariat, solemnly decreed, with those present, as follows: "It is established that there are three miracles; the first: the instantaneous and perfect healing of Sister of Saint Xavier, a religious professed of the Order of the Daughters of the Blessed Virgin Mary, in the world Mary Aloisia Farines, who had been afflicted with pulmonary phthisis; the second: the instantaneous and perfect healing of Sister of Saint Michael, a nun professed of the same Order, in the world Zelia Bayssade, who had been afflicted with a lethal paraplegia due to chronic meningomyelitis; the third: the instantaneous and perfect healing of Sister Mary of the Pillar, a nun professed of the Order of the Capuchins, who had been afflicted with a prolapsed, proliferating adenoid tumor in the left ovarian region." This Decree was ordered to be made public and recorded in the acts of the Congregation of Sacred Rites on the twelfth day before the Kalends of February, in the year 1900.

[Signed:]

Praenestinus, Cardinal MAZZELLA, Prefect of the Sacred Congregation.

DIOMEDESPANICI, Secretary of the Sacred Congregation.

BURDIGALEN.

Concerning the Beatification and Canonization of the Venerable Servant of God, Joan of Lestonnac, foundress of the Order of the Daughters of the Blessed Virgin Mary.

ON THE QUESTION: Whether, with the approval of her virtues and of three miracles, it is permissible to proceed to the solemn beatification of the aforementioned Venerable.

Christ, in repairing the Church, has foreseen that where the diseases of vices or errors abound, there He will provide more powerful defenses. And just as Luther and the heretics of that time opposed many men of outstanding sanctity, who were also staunch defenders of Catholic truth; so too, to the weaker sex, He raised up the Venerable Joan of Lestonnac,

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who was certainly a woman worthy of her time, and who...

[*Latin ed. p. 492*]

492 As a mediator to be presented to God, to shake off the darkness of customs, she was proposed. She laid the path for her work from a young age, having a desire for new things. Eager to preserve the faith against domestic dangers, she devoted herself to this with great effort. Joined in marriage, she maintained the purpose of a closer life, striving to cultivate virtues no less than raising children, and seeking to please her husband, but much more, God. After the loss of her spouse, "Having testimony for her good works, if she have brought up children, if she have received to harbour, if she have washed the saints' feet, if she have ministered to them that suffer tribulation, if she have diligently followed every good work," guided by a certain heavenly impulse, she set about establishing a Family of pious women, which, following the example of Father Ignatius, would serve as a new fortress and defense against the encroaching heresy of *nova arx* and *praesidium*. The undertaking, begun and carried out amidst great difficulties, prospered, and was approved by the most wholesome institution of Pope Paul V, and was followed by extraordinary praise from the eminent Cardinals Bellarmine and Baronius. After her death, she was honored in *Gallia* as is customary for those who have become friends of God; and her reputation for sanctity has remained steadfast to this day. When miracles were added to illustrate her life, the cause was reopened, and the customary process was initiated concerning three miracles. After these were duly examined, the Most Holy Lord Pope Leo XIII decreed on the twelfth of the kalends of February of the following year that all things were established. It remains to inquire, according to the statutes of this Holy See, whether the honors of the Blessed among the Venerable Joanna De Lestonnac can be granted. Therefore, at the general assembly before Father Brno, held at the Vatican on the third of the kalends of February of this year, the following question was proposed to the Most Reverend Cardinal Lucido Maria Parocchi, the Relator of the cause: "Whether, with the approval of virtues and three miracles, it is possible to proceed to the solemn beatification of the Venerable Joanna De Lestonnac." The Most Holy Father, having heard the opinions of the Most Reverend Cardinals and Fathers, decided to postpone his decree to another time, so that in this important matter, he might more earnestly implore the protection of heavenly light through prayer. On this very day, Sunday in the octave of Easter, having devoutly performed the sacred rites, he received the Most Reverend Cardinals Camillo Mazzella, Bishop of Praeneste, Prefect of the Congregation of Sacred Rites, and Lucido Maria Parocchi, Bishop of Porto.

[*Latin ed. p. 493*]

From the Sacred Congregation for Rites, number 495, and the Relator for

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the Cause of Santa Rufina, and together with John Baptist Lugari, Promoter of the Holy Faith, and myself, the undersigned Secretary, and in their presence, it was solemnly declared: "That it is possible to proceed to the solemn Beatification of the Venerable Joanna De Lestonnac." This decree was to be made public and inserted into the records of the Sacred Congregation for Rites, and it was ordered that Apostolic Letters, in the form of a Brief for Beatification, should be issued in the Patriarchal Basilica of the Vatican, to be celebrated whenever desired, on the fifth of the kalends of March, in the year 1900. C. CARD. MAZZELLA, Prefect of the S. B. C. L. S. DIOMEDES PANICI, Secretary of the S. B. C. AUGUSTANA. Concerning the Beatification and Canonization of the Venerable Servant of God, Mary Crescentia Höss, a professed nun of the third order of St. Francis, in the monastery of Kauffburan. REGARDING THE QUESTION of whether, and concerning which miracles, there is evidence in the case and regarding the effect of what is being considered. Beloved Virgins, brides of the celestial Lamb, who is fed among the lilies, hidden and buried within, having pursued the innocence of life with penance for His love, they shine in the Church like stars in the pure sky, "a spectacle made to the world and to angels and to men." This is entirely worthy to be included among the number of wise virgins and prudent women, who are presented as an example and a support to human weakness. The Venerable Mary Crescentia Höss, called, as was the custom, Hoëssin. Born to pious parents who lived by textile labor in Kauffburan in Swabia, on the thirteenth of the kalends of November, in the year 1682, she gave signs of future sanctity from her earliest years. For she was indeed filled with fervor of spirit in the temples, and so early did she learn to raise suppliant hands and prayers to heaven, that she seemed to have acquired knowledge of divine things before she learned to speak. As she advanced in adolescence, with an innocent step, amidst the dangers of the Lutheran sect, she embraced every kind of Christian virtue.

[*Latin ed. p. 494*]

494. From the Sacred Congregation of Rites: She proceeded with such modesty, carefully controlling her steps, her speech, and her manners, and she burned with such charity for the poor, that she easily gained the love and esteem of all citizens, and even drew the admiration of those who favored error. Therefore, as Gregory says about the most patient man, Job: "Let it be said where she lived, so that this may be for the praise of her, that she was good among the wicked" (Moral. c. I). Among these things, her love for solitude, which from the very beginning of her life seemed to grow more and more each day, led her to request entrance into the Kauffburise monastery, so that she might dedicate herself to God through the religious vows of the Third Order of St. Francis, among those virgins. However, due to the poverty of the family, she was repeatedly rejected; but finally, at the urging of a Lutheran man, a city councilor, she was admitted to the

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aforementioned monastery, having received a very worthy benefit, and, although without a dowry, she made her vows at the age of twenty-one. After enduring many things with remarkable patience, and after completing her novitiate, she served as a teacher for ten years and seven months, instructing the younger virgins. Then, by the votes of all the sisters, she was appointed president of the entire monastery. In this office, she shone with such fame and renown that her name was spoken throughout Germany, Bavaria, Hungary, and other nations, not only by Catholics, but also by non-Catholics. Therefore, it is not surprising that men distinguished for their dignity, learning, and virtue, even kings and nobles of the states, sought her counsel. Having completed her sixty-fourth year, she was consumed not by natural illness, but by the power of divine ardor, and, having foretold the hour of her death, she passed away in a blessed manner, on the eve of April in the year 1744, to be united with the marriage of the heavenly Lamb. The sanctity of Maria Crescentia was confirmed by remarkable graces during her life, and by miracles both at her funeral and afterward. Two investigations were duly instituted by the Sacred Congregation; first, in the preparatory meeting held on the twelfth of January, 1897, before Cardinal Miecislaus Ledochowski, the Relator; then, after the cause was instituted, on the sixth of May, 1899, in the preparatory session in the halls of the Vatican. Finally, with the entire assembly of Sacred Rites convened, before the Most Holy Pope Leo XIII, on the third of February of the following year, and by the Most Reverend Cardinal Camillo Mazzella, Prefect of the Sacred Congregation, in place of the Most Reverend Cardinal Miecislaus Le-

[*Latin ed. p. 495*]

From the Acts of the Sacred Congregation of Rites, number 495, a doubt is presented: "Whether, and concerning which miracles, there is proof in the case, and to what effect it pertains." The Most Eminent Cardinals and Consultors each presented their opinions. Of all these, except for the votes, the Most Holy Father reserved the decreeing judgment for another day. However, he stated that what will happen is sufficiently understood, both by the excellence of the miracles and by the wonderful agreement and unanimity of your opinions. On this day, Sunday in Quinquagesima, after the sacred rites were completed, the Most Eminent Cardinals, Camillus Mazzella, Bishop of Praeneste, Prefect of the Congregation of Sacred Rites, in place of the aforementioned Cardinal Miecislai Ledocowski, the cause's Relator, together with the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, and myself, the undersigned Secretary, were summoned. In their presence, a solemn decree was enacted, stating that there is proof of two miracles: the first, "of the instantaneous and perfect healing of Mary Magdalene Kolman from an epithelial tumor of the right breast"; the second, "of the instantaneous and perfect healing of Francisca Prixin from a chronic fistula of the larynx, which had reached a very advanced stage,

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along with caries of the bone." This decree was ordered to be published and recorded in the acts of the Congregation of Sacred Rites on the fifth day before the Kalends of March, in the year 1900.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites.

L. S. DIOMEDES PANICI, Secretary of the Sacred Congregation of Rites.

Furthermore, concerning the beatification or declaration of martyrdom of the venerable servants of God, Ignatius Delgado, Bishop of Mellipotamen, Vicar Apostolic of Tunquin Orientalis, of the Order of Preachers; Dominic Henares, Bishop of Fesseitensis, coadjutor of the aforementioned Vicar Apostolic; and their companions, who were killed by idolaters in hatred of the faith:

CONCERNING THE DOUBT: Whether there is proof of martyrdom and the cause of martyrdom, and of the signs or miracles that illustrate the martyrdom itself, in the case and to the effect in question. The series of most valiant men who, with their shed blood, bore witness to Christ, has never been concluded by time...

[*Latin ed. p. 496*]

496. From the Sacred Congregation of Rites, which has long preserved the index of these matters, it is now reported concerning the blessed martyrs John Gabriel Taurin, Bishop of Trabac, Peter Dumolin Borie, elected Bishop, and their companions, in the cause of China, Tonkin, and Cochinchina. New names are added to the list, bringing the total to twenty-six from the same glorious contest. These men, having performed the duties of the apostolate at the beginning of this century, having labored beyond measure in those lands, having endured every kind of peril, and having striven with long toil to spread and establish the faith, did not hesitate to seal it with their own blood. Leading this purple army of martyrs is Ignatius Delgado, Bishop of Mellipotam, who for a long time suffered martyrdom in prison; and his companion, Dominic Henares, Bishop of Fesseit, who completed the contest with the severing of his head. Following them is the rest of the cohort, among whom are priests from the illustrious and highly meritorious Order of Preachers: Vincent Yen, Dominic Dieu, also known as Hanc, Peter Tu, Thomas Du, Dominic Doan, also known as Xuyen, Joseph Hien, Dominic Trach, also known as Doai, Joseph Fernandez, Provincial Vicar, and Dominic Tuoc, all of whom were beheaded, with the exception of the last, who died after being severely wounded. From the rest of the clergy are Joseph Nien, also known as Vien, and Bernard Due, both of whom were beheaded, and Peter Tuan, who was consumed by the long duration of his torments in chains. Among those who ministered to the instruction of the faithful are Joseph Canch, a physician, Francis Chien, also known as Chieu, both of whom were condemned to death by beheading, Joseph, also known as Peter, Uyen, who perished in prison from suffering, Thomas Toan, who died

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of starvation, Francis Xavier Mau, and Dominic Uy, who were hanged. Following these, who suffered this extreme form of death, are two farmers, Augustine Moi and Stephen Vink; then three soldiers, of whom Dominic, also known as Nicholas, Dat was strangled with a rope, Augustine Hui, and Nicholas The were cut down. Finally, Thomas De, a tailor, was suffocated with a rope. After this glorious triumph, to which even miracles were added, the processes of the Inquisition were immediately instituted, which were carefully examined by the Sacred Congregation of Rites, and, having been approved and confirmed, by a decree issued by Our Holy Father Leo XIII, on the thirteenth of the month of December in the year 1897, it was graciously granted that the question of martyrdom, the cause of martyrdom, and the signs or miracles could be discussed in a special assembly of the Sacred Congregation, with the vote of the official prelates of the aforementioned Congregation. Therefore, in the assemblies held at the Vatican—

[*Latin ed. p. 497*]

On the 4th of February of this year, according to the Sacred Regulations, the Most Reverend Cardinal Caietan Aloisi-Masella proposed a question for discussion: "Whether it is established that there is martyrdom, the cause of the martyrdom, or miracles or signs in the case and for the effect of which we are speaking." The Cardinals and Prelates, each expressed their opinions. Nevertheless, the Most Blessed Father, having heard the report from the Most Reverend Cardinal Camillus Mazzella, Prefect of the Congregation of Sacred Rites, and although he knew the truth of the martyrdom and the miracles, he postponed giving his judgment to another day, so that in this very serious matter, divine light might be more and more revealed. Today, however, on the Sunday of Quinquagesima, having entered the most sacred and noble hall of the Vatican, he summoned the Most Reverend Cardinals Camillus Mazzella, Bishop of Preneste, Prefect of the Congregation of Sacred Rites, and Caietan Aloisi-Masella, the Relator of the cause, together with the Reverend Father John Baptist Lugari, Promoter of the Holy Office, and myself, the undersigned Secretary, and in their presence, with a solemn decree, he declared: "That it is established that there is martyrdom and the cause of the martyrdom of these Venerable Servants of God, and also of the miracles or signs that illustrate and confirm the martyrdom, so that proceedings may be made in the case and for the effect of which we are speaking." And this decree was ordered to be published and recorded in the acts of the Congregation of Sacred Rites on the 25th of February in the year 1900.

C. CARD. MAZZELLA, Prefect of the Sacred Rites.

L. S. DIOMEDES PANICI, Secretary of the Sacred Rites.

CHINA.

Concerning the beatification or declaration of martyrdom of the Ven-

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erable Servant of God, Francis Clet, a priest of the Congregation of the Missions of Saint Vincent de Paul.

ON THE QUESTION: Whether it is established that there is martyrdom and the cause of the martyrdom, and also of the signs or miracles that illustrate the martyrdom itself, in the case and for the effect of which we are speaking.

How much merit those sacred families of the pious have earned for the religion and for all society, against which the world, with evil intent, acts. Vol. XXXII. p. CCCLXXX. 32.

[*Latin ed. p. 498*]

498. The sacred rites, so often celebrated, are most eloquently demonstrated by many of those from this order, who, not only with domestic virtues, but also with a public testimony of faith in the Catholic Church, have adorned the Church with the palms of Christ, through their blood. Among these is the most illustrious Congregation, which had Saint Vincent de Paul as its founder. This Congregation, embracing every kind of ministry and charity, and extending its benevolence as far as human nature allows, at the beginning of this century, in the regions of China, gave to the Venerable Servant of God, Francis Clet, a companion to the other martyrs. Born of a noble family in Gratianopolis, and piously instructed by his parents, he passed his childhood in such a manner, that not only did he remove every fault from himself, but, despising the delights of the world, he early conceived a desire to embrace the sacred military order. First, in the small seminary of his city, called Saint Martin of the Poor, he excelled in studies and in the sanctity of his life; then, inflamed by the love of a more perfect life, he went to Lyons and requested admission into the Congregation of the Missions of Saint Vincent de Paul. From there, after having duly pronounced his vows and being ordained a priest, he was sent to Annecy to teach theology in that sacred institution. There, for fifteen years, he gave such excellent examples of virtue, that he was deemed worthy to govern young men in the seminary of Saint Lazarus, in the chief city of Gaul. In this office, his prudence shone forth wonderfully, when, amidst the furious waves caused by a miserable sedition, the armed hand of the wicked ravaged and destroyed that dwelling. But a stronger man and more steadfast, he saw that a wider field was still open to him, where he might gather more abundant fruits for his own and the salvation of others. Moved by this desire, in the year 1791, he was sent, along with a new group of priests, to the regions of China. There, for thirty years, he persevered as the administrator of the mission in the province of Kin-Kieng, never wearying in his labors, never remiss in his vigilance, never deterred by long and arduous journeys, nor by dangers and threats, but rather, he brought many to Christ. This ardent zeal for the advancement of the faith, at length, brought him to the outcome most worthy of the merits and desires of so

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virtuous a man. At the beginning of the persecution, he was disturbed by a pagan, who, having set fire to his own house for the sake of revenge, accused the Christians, as if they, instigated by Francis, had caused the fire. The Venerable Clet and his companions were immediately sought after; first, he fled, hiding in the mountains and caves, until, betrayed by the denunciation of a degenerate Christian, he was apprehended.

[*Latin ed. p. 499*]

From the Sacred Rituals, number 499: Another Jude, encountering him, spoke to him most humanely. Having strenuously professed himself a herald of the Catholic Faith, he was cast into prison with the most savage torments, where, advanced in years and having exhausted his strength, he steadfastly endured a long martyrdom of solid food deprivation, which was made even more grievous by death itself. Finally, condemned by the governor to lose his life by the rope, and as the hour of torture approached, he, filled with joy, turned his fervent prayers to the saints: "Come, approach," he said, and while still breathing, they bound him with a rope, trampled on him with their feet, and cruelly afflicted him; until, after loosening the bonds of his body, his most blessed soul ascended to heaven on the thirteenth day before March, in the year 1820. The fame of this martyrdom spread widely, and after mature consideration of the legal proofs, the Most Holy Pope Gregory XVI, on the seventh day before July, in the year 1843, signed the commission for the cause with his own hand. After the processes, duly conducted with Apostolic authority and properly proven, the Most Holy Lord Pope Leo XIII, with a generous decree on the day before the ides of June of the preceding year, graciously permitted that the question of martyrdom and the cause of martyrdom, as well as the miracles or signs confirming it, might be discussed in a special assembly of the Sacred Congregation of Rituals, with the vote of the Official Consultors. Therefore, in the assembly held in the buildings of the Vatican on the ninth day before the kalends of March, the Reverend Cardinal Caietan Aloisi-Masella, the promoter of the cause, proposed the question: "Whether it is established, for the case and to the effect of which we are speaking, concerning the martyrdom itself, and also concerning the miracles or signs that illustrate the martyrdom?" The Reverend Cardinals and Prelates, each in turn, presented their opinions. The Most Blessed Father, having heard from the Reverend Cardinal Camillo Mazzella, Prefect of the Sacred Congregation, a report on all matters, postponed pronouncing the Apostolic judgment, so that in this important matter, he might obtain greater assistance from the Father of Lights. On that Sunday in Quinquagesima, having summoned the Reverend Cardinal Camillo Mazzella, Bishop of Preneste, Prefect of the Sacred Congregation, and the Reverend Cardinal Caietan Aloisi-Masella, promoter of the cause, together with the Reverend Father John Baptist Lugari, Promoter of

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the Faith, and myself, the undersigned Secretary, and those present, he solemnly decreed: "That it is established concerning the martyrdom and the cause of the martyrdom, and also concerning the signs or miracles that illustrate and confirm the martyrdom of the Venerable Servant of God Francis Clet, so that..."

[*Latin ed. p. 500*]

300 FROM THE SACRED RITUAL: "It can be extended further, in the case and to the effect of which we are speaking." This kind of decree was ordered to be made public and recorded in the acts of the Congregation of Sacred Rites on the fifth day before the Kalends of March in the year 1900. V. CARD. MAZZELLA, Prefect of the Sacred Rites Congregation. L. h£ S. DIOMEDES PANICI, Secretary of the Sacred Rites Congregation. FROM THE SACRED CONGREGATION OF THE HOLY OFFICE: DOUBT: Whether a dispensation can also be granted from the impediment of clandestinity, by virtue of this faculty? To the Bishops, the power to dispense in articulo mortis from impediments hindering marriages of concubinarii. Most Blessed Father. The Bishop N. N., prostrate at the feet of Your Holiness, humbly explains the following: By the Decrees of the Sacred and Holy Office of February 10, 1885, and March 1, 1889, Your Holiness benignly granted the local Ordinaries, to the Parishes, the power to dispense, even through habitual delegation, to those who, according to civil laws, are joined together, or otherwise live in concubinage, from impediments, whatever they may be, which hinder marriage according to ecclesiastical law, except for the Holy Order of the Priesthood and affinity in the direct line resulting from a lawful marriage, so that the dying may, in such a time of distress, be lawfully joined in the sight of the Church and consult their own conscience. Indeed, a question has arisen among theologians regarding this matter, whether, by virtue of the aforementioned faculties, it is permissible for the Bishop, given necessity, to dispense even from the impediment of clandestinity; some affirm, because there is no exception made regarding this in the general concession; while others deny, because the purpose of the concession is that the dying may be lawfully joined in the sight of the Church, which seems to imply that the solemnity of the forms prescribed by the Council of Trent under pain of nullity must be observed, at least in substance.

[*Latin ed. p. 501*]

AFTER these preliminaries, the Bishop, the speaker for the Holy Office, earnestly implores that [the Congregation] not disdain to define, for the sake of its benevolence: Whether in the aforementioned Decrees, the power of granting a dispensation from the impediment of clandestine marriage is truly included; so that, for example, a Parish Priest, habitually delegated by the Bishop, might, within his parish, join together not his own parishioners,

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but those strangers who happen to be present there, by granting a dispensation from the presence of the proper Parish Priest, to whom no recourse whatsoever can be made; or even to join together his own parishioners, but without witnesses, likewise granting a dispensation from their presence, when there are absolutely no one who can perform the office of witnesses. And God, etc. On the fourth day of the week, December 13, 1899.

In the General Congregation of the Holy Roman and Universal Inquisition, held by the Most Eminent and Reverend Cardinals, General Inquisitors in matters of faith and morals, concerning the aforementioned question, and after the vote of the Most Reverend Consultors, the same Most Eminent and Reverend Fathers ordered that an answer be given: Affirmative. On the following sixth day of the week, December 15 of the same month and year, by the powers granted to the Most Eminent and Reverend Cardinal, Secretary of the Holy Office, the Most Holy Father, Leo, by the Grace of God, Pope XIII, approved the resolution of the Most Eminent and Reverend Fathers.

I. CANON MANCINIS, Notary of the Holy Office and the Universal Inquisition.

QUESTION: Whether and in what manner it is permissible or opportune to perform a Caesarean section upon a woman certainly deceased.

Most Blessed Father. The Bishop N. N., prostrate at Your feet, presents the following: The Parish Priest N. N., in this Diocese, according to the prescriptions of the Roman Ritual, and also according to the requests of a pregnant woman who was gravely ill, took care that a Caesarean section be performed upon this woman, who was certainly dead. The physician was absent, and the operation was performed by another capable person. The child was alive and was baptized. Because of this event, the aforementioned Parish Priest was accused.

[*Latin ed. p. 502*]

502 FROM THE SUPREME SACRED INQUISITION, but remitted by civil judges without any condemnation. Afterwards, and for the same reason, the aforementioned parish priest was deprived of his annual salary by the Government. The question is raised: 1. Did the parish priest N. N. act rightly in seeking to have the operation performed, given the lack of a doctor, by another capable person, although this person's death was certain, but not legally recognized? 2. Should a parish priest, or another priest, seek to have the operation in question performed, under the aforementioned circumstances, even when it must be followed by the deprivation of the annual salary? And God, etc. Thursday, December 13, 1899. In the General Congregation of the Sacred Roman and Universal Inquisition, held by the Eminent and Reverend Cardinals, General Inquisitors, with the aforementioned questions proposed, and with the vote of the Most Reverend Consultors preceding, the same Eminent and Reverend Fathers were commanded

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to respond; Let the Decree of the Holy Office of February 15, 1780, to the Apostolic Vicar of Sutchuen, be given. Furthermore, the aforementioned Decree reads as follows: "Where the Roman Ritual prescribes regarding the rebaptism of infants, namely: If a pregnant mother has died, the fetus should be carefully extracted as soon as possible; this has occurred in Christian cases, but the prescribed rule has never been observed, nor ever promulgated. The reasons are: the extreme aversion that the Chinese have to such a procedure, the absolute lack of knowledge of anatomy among them, the very grave danger of inciting vile calumnies against the religion and of suffering serious persecution, with the loss of life and salvation, at least for those who dared to attempt the procedure, if the matter were to come to the knowledge of the Gentiles, which is very easily done. Can the aforementioned reasons excuse silence? Answer: Although one must act cautiously and prudently, so that in seeking a few, we do not lose many, it is nevertheless necessary to act, and to impart knowledge of the section prescribed by the Ritual, so that we may not seem to have forgotten those for whom it is manifest that they are in dire need of abundant charity. Therefore, it will be the duty of the missionaries to gradually and opportunely inform the people of Sutchuen about the miserable condition of the infants.

[*Latin ed. p. 503*]

FROM THE SACRED CONGREGATION, section 503: Concerning those who die in the womb of their mothers, for whom Christian charity, as far as human strength allows, demands that we provide assistance; ecclesiastical concern also demands it. It should not be considered improper for the missionaries to cut away the dead mother, even if the body of Saint Dominic has been dissected for our redemption. Rather, it is utterly unreasonable and far removed from all piety, to condemn the living child to eternal death in order to preserve the empty integrity and modesty of the deceased mother. Certainly, neither modesty nor virtue is the source of such evil. However, this extraction of the fetus from the womb of a pregnant woman who has died, although it must be explained and demonstrated as we have said, nevertheless, His Holiness expressly cautions and prohibits the missionaries from intervening in particular cases to demand such a section, and even less so from performing it. Therefore, it has been sufficient for the missionaries to have made this known and to have ensured that those who are involved in it, namely laymen, learn how to carry it out properly; and then, when the circumstances require it, to have relinquished the burden and duty of this practice to them. On the following Saturday, the 15th day of the same month and year, through the faculties granted by the Most Eminent and Reverend Lord Cardinal, Secretary of the Holy Office, His Holiness, Pope Leo XIII, approved the resolution of the Most Eminent and Reverend Fathers of the Sacred Congregation. I. CAN. MANCINIS, Notary

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of the Sacred Congregation. DOUBT: Does the decree of the Holy Office, declaring that it applies to the General Minister of Religious Orders, also extend to his successors, regarding the faculties granted to the Ordinaries? Most Blessed Father, the Superior General of the Order N. N., humbly prostrates himself before Your Holiness and requests that Your Holiness deign to declare: Whether the resolution of the Sacred Congregation of the Holy Office, of the 3rd of May, 1899, approved by Your Holiness on the 5th of the same month and year, in which it was declared that all special faculties habitually granted by the Holy See to Bishops and other Ordinaries of places, even for a limited time, due to their death or cessation from office, pass to their successors, extends to all Superiors. And God, etc.

[*Latin ed. p. 504*]

504 FROM THE HOLY OFFICE, Thursday, December 20, 1899. In the General Congregation of the Holy Roman and Universal Inquisition, before the Most Eminent and Reverend Lords, Cardinals, General Inquisitors in matters of faith and morals, having considered the aforementioned doubt, and after the vote of the Reverend Consultors, the same Most Eminent and Reverend Fathers decreed that a petition should be made to the Most Holy Father for the extension of the decree of May 3, 1899, to the Superiors General of the Religious Orders. Subsequently, on Thursday, December 22 of the same month and year, through the faculties granted to the Most Eminent and Reverend Lord Cardinal, Secretary of the Holy Office, the Most Holy Lord Pope Leo XIII, of blessed memory, approved the resolution of the Most Eminent and Reverend Fathers, and graciously granted the aforementioned extension. I, Canon Mancini, Notary of the Holy and Universal Inquisition. DOUBT: Whether religious congregations subject to simple vows are subject to the decree prohibiting Superiors from hearing the confessions of their own subordinates. To the Most Blessed Father, The General Procurator of the Religious Congregation N. N., prostrate at the feet of the Holy Father, humbly presents as follows: It has been declared by the Holy Office on August 23, 1899, that the decree which forbade the Superiors of Religious Communities from hearing the confessions of their own subordinates did not derogate from the decrees of Clement VIII, which establish that the novices of Religious Orders not only may, but must, confess to their own Master, who is the Superior of the Novitiate. Furthermore, that Superiors may hear the confessions of their own subordinates when it concerns reserved sins, or when they are freely requested by them. Now, since it has been stated in the aforementioned declaration that the aforementioned decrees of Clement VIII have not been derogated with regard to Religious Orders, it is asked whether this declaration also applies to religious congregations of simple vows, which have perpetual vows, live

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in common life, and are approved by the Church. And so forth.

[*Latin ed. p. 505*]

FROM THE SACRED CONGREGATION FOR THE INQUISITION, 505, Thursday, December 20, 1899. In the General Congregation of the Sacred Roman and Universal Inquisition, held by the Most Eminent and Reverend Cardinals, General Inquisitors in matters of faith and morals, concerning the aforementioned doubt, and after the vote of the Most Reverend Consultors, the same Most Eminent and Reverend Fathers decreed that the answer should be: Negative. On the following Saturday, December 22 of the same month and year, through the powers granted to the Most Reverend and Right Reverend Cardinal, Secretary of the Holy Office, the Most Holy Father, Leo, by the grace of God, Pope XIII, approved the resolution of the Most Eminent and Reverend Fathers. I, CANON MANCINI, Notary of the Sacred Congregation for the Inquisition. FROM THE SACRED APOSTOLIC PENITENTIARY: DOUBTS concerning the increase of the proper stipends for parish priests. By law of June 4, 1899, number 350, and the regulation approved by Royal Decree of August 25, 1899, number 350, the parish priests of Italy have received an annual stipend of 900 lire, which will subsequently be increased to 1000 lire. Now, this increase in the proper stipend is provided by the Administration of the fund for the Cult, and the sums are derived from the assets of the Rectories and Communal entities suppressed by the Government, and from the assets of the ecclesiastical fund, that is to say, from suppressed benefices and from religious communities expelled and deprived of their possessions. Consequently, what is given to the parish priests for the proper stipend, or for the increase of the proper stipend, is not from the parish, to which this proper stipend or increase is offered. With this established, can a parish priest: I. Accept the proper stipend or the increase of the proper stipend, which is constituted by assets that were not of the parish, but of other moral bodies? II. If the proper stipend or the increase of the proper stipend is given to a parish priest, in whose church there was a Communal entity (collegiate or...)

[*Latin ed. p. 506*]

506 FROM THE APOSTOLIC PENITENTIARY (Response), and constituted by the goods of the Community itself, now released to the Municipalities, must the Parish Priest be part of his Clergy, or can he retain everything for himself as a revenue of the Parish? III. And if the Parish Priest knows that his allowance, received directly from the Cult Fund, or through the Municipality, belonged to a moral entity (located in his Church or elsewhere) with certain obligations of Masses and other works of worship and piety, must he, at least in proportion to the allowance, fulfill those obligations? IV. Must the Parish Priest, in the act of acceptance, make at least an oral protest, even to avoid incurring the censures issued against those who usurp the

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goods of the Church? V. Can the Bishops burden the supplementary allowance given to the Parish Priests, for the benefit of their Church or their Clergy? VI. Do the Bishops have the power to negotiate themselves, or the Parish Priests, with the Cult Fund and the Municipalities regarding anything concerning the allowance or its supplement?

The Sacred Penitentiary responds to the aforementioned questions:

I. Attentive to the circumstances of the times, it can be tolerated, provided that scandal is avoided, and with the intention of observing the mandates of the Church.

II, III, and V. One must refer to the Holy Congregation of Councils.

IV. It is sufficient to declare the conditions stipulated in the response to I.

VI. It can be tolerated.

December 14, 1899.

DOUBTS regarding the new law on the transfer of ecclesiastical goods to the Municipalities.

I. Is it permissible for the Municipalities to request or accept from the Cult Fund the delivery of the revenues of the suppressed Benefices and religious Corporations, with the conditions established by the aforementioned law (of June 4, 1899)?

II. Can Municipalities that claim patronage over the Parish Church, or have allocated a sum in the municipal budget for expenses of worship, lawfully, in order not to burden the populations too much, cancel the "Cult" article in the municipal budget, and instead supplement it with the revenue from the suppressed Benefices, as prescribed by the law?

[*Latin ed. p. 507*]

FROM THE APOSTOLIC PENITENTIARY 507 III. Can the exceeding revenue be considered as the property of the Municipalities? And can these be considered not obligated to fulfill the religious burdens attached to abolished foundations, or are the revenues of moral bodies and suppressed ecclesiastical entities sufficient? The Sacred Penitentiary responds to the aforementioned doubts: To I and II. Considering the circumstances of the times, it can be tolerated, provided that scandal is removed and every effort is made to care for the benefit of the Church as much as possible. To III. The doubt is reformulated: "Whether the Municipalities are obligated to fulfill the burdens attached to ecclesiastical goods or revenues, received from the Civil Authority." Response: As far as it can be done, affirmatively. December 14, 1899. DECLARATIONS regarding the suspension of faculties towards Bishops. "The Sacred Penitentiary, having carefully considered the matters presented, declares, through the Bull *Quod Pontificum*, that the faculties remain valid and firm for both forums, and for whatever cases, both hidden and public, all the faculties which Bishops and Ordinaries

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have, whether by common ecclesiastical law, especially that of the Council of Trent, or by a special indulgence granted by the Apostolic See in a particular case for specifically named persons. All other faculties, whether temporary or perpetual, granted in any way, whether by the Sacred Penitentiary, or by any other Congregation, or even directly by the Supreme Pontiff himself, if they are for the internal forum, are entirely ceased; if they are for the external forum (such as that of dispensing in mixed marriages), they remain. Provision has been made for those who are legitimately prevented from going to Rome, through a declaration given by this Sacred Penitentiary on December 21, 1899, a copy of which is transmitted."

[*Latin ed. p. 508*]

508 FROM THE APOSTOLIC DECREE OF PARDONS concerning the Bull of the Crusade. Having the Most Reverend Archbishop of Palermo requested that the indulgences, faculties, and remissions granted by the Bull of the Crusade not be suspended during the current Holy Year, the following Decree was issued by the Holy Penitentiary, approved by His Holiness in the Audience of January 19, 1900: "It pleases the Holy See that the indulgences, faculties, and remissions granted by the Bull of the Crusade remain in full force also during this Jubilee year; and the Most Reverend Archbishop shall see to it that this grace be brought to the knowledge of those to whom it pertains, by sending letters to the Commissaries of the Crusade in Sicily, and to the Archbishop [of the Neapolitan Diocese] for the Commissaries of Southern Italy." DECLARATION. The concessions of the Bull *Aeterni Pastoris* are extended to Religious women who have taken simple vows. The Most Reverend Vicar of Rome requested of the Holy Penitentiary: "Whether the professed nuns who have taken simple vows are included in the Bull *Aeterni Pastoris*; and whether these, during the Jubilee year, must choose their confessor from among those approved for nuns; or whether they may choose him from among those who are approved by the Ordinary for laypersons." — And the Holy Penitentiary, on January 11, 1900, responded: "Having considered the matters presented, the Holy Penitentiary responds: Yes, the benefits of the Bull *Aeterni Pastoris* also apply to nuns who have professed simple vows, and it is permitted for them to choose a confessor for themselves once from among those simply approved to hear the confessions of laypersons." NOTIFICATION whereby the Most Reverend Vicar of Rome has granted special faculties to each secular or religious confessor for the Holy Year. Domenico Maria of the title of the Most Holy Marcellinus and Peter of the Sacred Roman Church, Cardinal Jacobini, of the Holiness of Our Lord, General Vicar, of the Roman Curia and his Judicial District, Ordinary. The Holiness of Our Lord, in the Constitution *Quoniam divinae bonitatis*, published on October 21st of the

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present year, after having...

[*Latin ed. p. 509*]

FROM THE APOSTOLIC PENITENTIARY, 509. The most ample faculties were not only granted to the Penitentiaries of the Four Patriarchal Basilicas, but also to others, to be designated in the churches of Rome by His Eminence, the Most Reverend Cardinal Penitentiary Major, and for the coming Holy Year, She has benignly deigned to grant special faculties, although lesser than the previous ones, also to other confessors to be designated by Us, for the greater convenience and spiritual consolation of the faithful. Therefore, adhering to the aforementioned Constitution, We designate all confessors, both Regular and Secular, approved "for both sexes" by Us, or by the Illustrious and Reverend Monsignor Vicegerent, for this city or suburb, with a "For the Year" certificate: so that, throughout the entire Holy Year, the faculties expressed in the same Constitution, from § XXII to § XXIV, are granted to them, which, however, the secular confessors cannot exercise outside the churches indicated in their respective certificates. We therefore order all these confessors to read and carefully consider the salutary warnings contained in the aforementioned Constitution, as well as the other apostolic document, entitled: "Excerpts from the Constitution of Benedict XIV, etc.," and whose content begins with the words: "Singulares ad expiandos." Furthermore, We grant to the same confessors, during the entire year of the Jubilee, the faculty of absolving in the forum of conscience from the two [sins reserved to Us]. We do not intend to grant the aforementioned faculties to those confessors who have been or will be approved simply verbally for any time, or even with a certificate for a period of less than one year, and We wish that this notification be posted in the sacristies in a visible place. Given from Our Residence, January 3, 1900. DOMENICO MARIA CARD. VICARIO. L. * S. PIETRO. Canon. CHECCHI, Secretary.

[*Latin ed. p. 510*]

510 FROM THE APOSTOLIC PENITENTIARY: A QUESTION; it cannot begin, once the ecclesiastical day has begun, a new visitation of the four Basilicas, which has already been completed on the same natural day. Regarding the following question concerning the visitation of the Sacred Basilicas with regard to gaining the Jubilee indulgence, as a necessary condition is prescribed, it is asked: Whether, after the visitation of the four Basilicas has ended on the same natural day, it is immediately possible, when a new ecclesiastical day begins, to begin a new visitation of the four Basilicas, by again entering the Basilica that was last visited. January 28, 1900. The Sacred Penitentiary, concerning the aforementioned question, responds: Affirmative. Given in Rome, in the Sacred Penitentiary, on January 31, 1900. SOME QUESTIONS taken from the Constitution *Quoniam divinae*. (1) 0 N. IV. – Penitent persons may be absolved from the aforementioned cen-

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sures and sins, even though the censures to which they are subject are public, in the places from which they came (1), and even though they have been imposed or explicitly declared and denounced in those same places by Ordinary authorities or any judges: provided, however, that penitent persons are informed about the *libellus*, as below, in public cases (2). To be submitted entirely to the Apostolic Penitentiary . . . . . However, heretics who have publicly professed dogma are not to be absolved, unless, after having abjured the heresy (3), they have, as is fitting, made amends (4). QUESTION I. (1) With these words, could it be understood that those who reside in Rome are excluded, since the words "in the places from which they came" do not seem to apply strictly to them? In their case, is the same rule to be observed as with others? II. (2) Is the *libellus*, of which mention is made, to be drawn up indiscriminately for all public censures, even if they have not been imposed, or explicitly declared and denounced, or only for those public censures that have been simultaneously imposed, or explicitly declared, and denounced? (1) This Constitution was reported in Volume XXXII, page 265.

[*Latin ed. p. 511*]

FROM THE APOSTOLIC PENITENTIARY, 511, III. (3) Whether this abjuration must be absolutely public and in the solemn form prescribed by the Church, or whether it suffices to be made before a confessor, or in what manner? IV. (4) Whether the reparation of scandal must absolutely precede absolution, or if this cannot be done here and now, whether it suffices for such penitents to seriously promise to repair the scandal, especially if they have come from afar? QUESTIONS EXTRACTED from "Monitions" (i). Q. N. XIV. — If someone, after having made Confession, falls into a mortal sin before having completely fulfilled all the works prescribed for gaining the Jubilee, must he make another Confession before fulfilling at least one of the other prescribed works, in order to obtain the Indulgence attached to the Jubilee? (1). QUESTION V. (1) It is asked: Whether, in this case, the Holy Communion suffices as the last work? Q. N. XIX. — Whoever, during the time of the Holy Year, has repeated all and each of the works twice or more, may also gain the Jubilee of the Holy Year twice or more, provided that he who has once become a partaker of these graces cannot become a partaker of them again in the first instance in which he obtained the Jubilee. (1). QUESTION VI. (2) It is asked: Whether among the graces of which one cannot become a partaker a second time for the acquisition of the Jubilee, the exchange of visits to the Basilicas should be included, so that he who has already availed himself of it once cannot become a partaker of that exchange a second time? Q. N. XXIV. — The visit to the four Basilicas must be made in one day, etc. (1). (1) "Monitions" are found in Volume

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XXXII, 528.

[*Latin ed. p. 512*]

512 FROM THE APOSTOLIC PENITENTIARY, QUESTION VII (3). For the secure practice of the faithful, the following is asked: Whether he who, for example, after the civil hour of ten o'clock at night, has completed the visitation of the four Basilicas, whether he should count the day as natural or ecclesiastical, may again enter the last Basilica, and there usefully repeat a new visitation immediately, with the intention of completing the remaining visitations the following day? 0 N. XXV. — and those who practice judicial astrology, either by themselves or through others, concerning the state of the republic, etc. (1). QUESTION VIII (4). Since this case does not seem to be contained, either directly or indirectly, in the Apostolic Constitutions, the following is asked: Is there any new censure, or should it be considered as a special case reserved to the Holy Pontiff without censure? What is to be done? The Sacred Penitentiary responds to the proposed questions: From the Constitution *Quoniam divina*, to I. Negatively to the first part, affirmatively to the second. To II. Affirmatively to the first part, negatively to the second. To III. The reparation of public scandal must be public: the abjuration may be secret with the confessor himself. To IV. If he seriously promises, affirmatively. — From the *Monita*, to I. Affirmatively. To II. Affirmatively. To III. With the clarification made from the definition of the time at which Vespers begin, as consulted by approved authors, concerning the rest, affirmatively. To IV. Those who have inquired, either by themselves or through others, into the state of the Christian republic through judicial astrology, are to be understood as those who have inquired about the life or death of the Roman Pontiff through said astrology, concerning whom the Constitutions of the Apostolic See have preserved the censures intact.

Given in Rome, in the Sacred Penitentiary, on the 20th of February, 1900.

B. POMPILIS, Prelate.

A. CAN. MARTINIS, Priest, Secretary.

[*Latin ed. p. 513*]

515 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. DECREE REGARDING A MARRIAGE DISPENSATION, June 17, 1899. Session 24, chapter 5, Concerning Marriages. A SUMMARY OF THE CASE. Gabriela L., a young woman distinguished not only by her beauty but also by her piety and the goodness of her character, after having received a sound education in Paris at the religious community of the Assumption, having barely reached the eighteenth year of her age, on February 17, 1890, entered into the marriage bond with a certain Leon R. The marriage was celebrated in Paris, in the church of Saint Mary, commonly known as des Battignolles, before the parish priest and

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witnesses, with all the formalities prescribed by the Holy Council of Trent; but under an ill-starred sign. From the very beginning of their conjugal life, the spouses have used the marriage bed, and have repeatedly attempted to consummate the marriage; but, if the woman is to be believed, the spouses have never been able to complete the conjugal act due to the man's lack of virility. Consequently, conjugal life has not proceeded with mutual affection; indeed, if the accounts are true, the husband has treated his wife inhumanely and has treated her not as a wife, but as a slave. Nevertheless, despite these circumstances, the spouses lived together for approximately seven years, until, with increasing domestic disputes, the woman bid farewell to her husband on May 22, 1897, and, with the consent of her parents, withdrew to a certain house of religious women, where she has resided to this day. Meanwhile, Gabriela, after having petitioned the civil court for a divorce, sent a petition to the Holy See, imploring that she be dispensed from the valid but unconsummated marriage. Such petitions were rejected by the Most Reverend Archbishop of Paris, who, obeying the orders of the Holy Father, had the process completed by a delegated judge. This is found in the records, Volume XXXII, page CCCLXXXI.

[*Latin ed. p. 514*]

514. From the Sacred Council, first, the woman herself was summoned, who, under oath, asserted the non-consummation of the marriage and attributed the cause to the husband's impotence. Subsequently, seven witnesses were examined under oath, who likewise testified in favor of the aforementioned woman. Finally, a physical examination of the woman was conducted by two physicians, who judged that the marriage had not been consummated. The husband himself was also summoned to the trial; but, despite three admonitions, he refused to comply with the judge's mandate. Therefore, the judge of Paris, transmitting the proceedings to the Sacred Congregation, simultaneously stated the following: "I believe that only two things should be noted. First, the plaintiff, then her parents and all the witnesses are trustworthy, being endowed with religion, good morals, and the utmost honesty. Among them are distinguished priests, whether by virtue of their office or called by the woman, and also the nuns of the aforementioned monastery of the Most Holy Virgin, Assumed into Heaven." "On the other hand, the defendant, in the other part, neither consents to appear nor to respond, either due to his own confusion or his manner of acting, or rather, due to the authority of the Church. Therefore, it seemed entirely impossible and indeed useless for the Tribunal to proceed further, since, as is evident, the non-consummation can be clearly proven from the documents themselves."

SYNOPTIC DISCUSSION. DEFENSE OF THE WOMAN. He who undertook the defense of the woman, after recounting the facts, divided his speech into three parts: in the first, he proves the non-consummation of

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the marriage based on the testimony of Gabriela, corroborated by the testimony of witnesses; in the second, he confirms the same based on the physical examination of the woman's body and on the circumstances; and in the third, he discusses the reasons for granting a dispensation. Beginning with the first point, he proves that the marriage was not consummated in this case, primarily based on the testimony of the woman. For Gabriela, under oath in the judicial examination, affirmed without hesitation that the marriage had never been consummated, along with all the circumstances.

[*Latin ed. p. 515*]

The Parisian case (515) describes attempts at consummation, which, however, were always unsuccessful due to the husband's lack of erection; hence, the religious woman truthfully states in her deposition: "All attempts were without result; I attribute the cause to the impotence of my husband... After eight months, all attempts ceased, and the matter was no longer mentioned. I affirm, in the most absolute manner, that the marriage was not consummated, and I agree to submit to a medical examination." The defender wishes to emphasize the importance of this confession, since it is well-established in law that a sworn testimony, when presented in court, creates a presumption of truth, so that it is considered true, unless there is no doubt about the honesty of the person making the oath. Indeed, according to established jurisprudence of the Sacred Congregation of the Council, as stated by Pallottini in *Vocabulum Disputationum Matrimonialium, Ratio et Non Consummatio*, § XII, nos. 87-89, "the oath of the spouses, 'even if nothing else is available, seems sufficient; and it is even more so if the person taking the oath is of a blameless conscience.'" On this matter, the defender presents several examples from the records of the Sacred Congregation, in which the sole, or almost sole, argument in favor of the lack of consummation was the sworn testimony of a religious spouse. Thus, in the case of Parisian, on June 26, 1858, Leo de Grolée swore that the marriage had not been consummated, while the woman, on the contrary, claimed that she had lived with her husband; nevertheless, considering Leo's integrity, the marriage was annulled. In Augustodunum, on July 15, 1893, the marriage was dispensed with in favor of the plaintiff, Alexander Chaullet, despite the woman's obstinacy. Also, in Burdigala, on December 12, 1896, the husband was obstinate, and the judgment was uncertain; however, considering the woman's piety and truthfulness, and at her request, the lack of consummation was accepted. Similarly, in many other cases, as evidenced by the records from Tergestina, April 21, 1877, Presmilien, June 1896, etc. Indeed, the defender continues, one must believe the sworn testimony of the woman; for she is a young woman imbued with the best morals and is very religious, and the most

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distinguished witnesses attest to her virtues.

[*Latin ed. p. 516*]

316 From the records of the Council, they extol the heavens and believe without hesitation what that witness asserted. And here, the advocate presents a long series of testimonies, favoring the cause of Gabrielle, from which I cannot select the most outstanding, for they are all excellent. "My daughter," says the mother of the actress, "is very pious, hardworking, and virtuous. In her affirmation made before the Ecclesiastical Tribunal, one can have absolute confidence." Aloysia Leroy affirms: "Madame R. would never lie. I am convinced that she did not lie. She is a well-raised person in the Catholic faith, respecting and practicing it: a student at the Ladies of the Assumption of Auteuil, and she honors her education." And the Reverend Picard, a witness by office, says: "Personally, I am convinced that the marriage was not consummated. I base my conviction on the character of Madame R., who is serious, pious, and whom I have always known to be loyal." Furthermore, Father Michael Bougeât, Vicar at St. Vincent de Paul, says: "I have the conviction, a real certainty, that the marriage was not consummated. Gabrielle Lemoux is an upright woman; very pious, very devoted to her duties. I have no doubt, and her affirmation alone, without the faith of an oath, would suffice to give me the conviction of the non-consummation of the marriage." To these, many others concur, such as Aloysius Ferembach, who says: "I absolutely believe in the veracity of my sister-in-law Gabrielle." Father Barbé says: "This lady is a good Christian, and I believe her incapable of perjuring herself on such a serious matter." Father Poulin, vicar in the parish of St. Clotilde, says: "I am convinced of the non-consummation, by the absolute trust that I have in Madame R. and her family." Finally, Sister Magdalena de Jesus, superior of the nuns of the Assumption of the Blessed Virgin Mary, says: "The affirmation of Gabrielle alone is sufficient to give me absolute conviction. The young woman is exceptionally virtuous, frank, upright, pious, fundamentally honest, very innocent, and has never given us anything here but satisfaction. She came here (after leaving her husband), very agitated and upset."

[*Latin ed. p. 517*]

PARIS. In paucis diebus, illa facta est oboedientissima, quasi in clausura: numquam egressa, omnes suas epistolas per me transmittens: nos edificans per suam simplicitatem, suum serietatem, et frequentiam Sacramentorum, quos numquam deseruit. Multum se dedit ad operandum pro pauperibus." - Sed praestantissimum testimonium de veritate non solum actricis, sed etiam eius familiae et testium, offert Curia Parisiensis: nam ait: "Oratrix, deinde parentes et omnes testes, sunt fideles, cum religione, bonis moribus et maxima honestate praediti sint." Praeterea, advocatus, Gabrielam, tempore non suspecto, affirmavit, quod illa matrimonium non consummasset.

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Testis est Gabriela, soror illius, cui, secundo post nuptias mense, arcana fori aperta sunt. - "Est in, ait, duobus primis mensibus, qui post matrimonium secuti sunt, ubi soror mea mihi de non consummatione locuta est. Dixit mihi quod nocte prima nuptiarum, maritus eius se ejus adpropinquavit cum praecipitatione extraordinaria, et nihil adfuit. Saepissime renovavit conatus suos, et semper sine successu. Post dimidiam horam, post quinque aut sex menses matrimonii, haec numquam renovata sunt." Imo, argumento haud dissimili, pergit patronus, probare Gabrielam de hac re conquestam esse non solum prioribus mensibus, sed toto tempore, quo vita coniugalis perduravit. Quia, cum mulieres plures ingenua puella secretorum participibus fecisset, sermones res divulgavit, et in ore omni populi esse coepit. "Ego personaliter persuasa sum quod matrimonium non consummatum est, quia soror mea mihi semper dixit quod numquam adfuit." (Clara Ferembach) - "Scivi per iuvenem, paucis mensibus post matrimonium, quod illa non poterat matrem esse, propter impotentiam mariti sui. Iuvenis illa saepe repetebat: "Semper sum quasi puella." Cum ego adiuvenam questionem ad iuvenem posui, illa respondit: "Ita: semper sum."

[*Latin ed. p. 518*]

518 FROM S. C. CONCILI COUNCIL: "I have a mass beside me: that is all." (A. De Lacour). And the mother of the bride, affirms: "The first person who spoke to me about the lack of consummation was my eldest daughter. It was about 15 or 18 months after the marriage. She said to me in general terms: 'Gabrielle complains of having no relations with her husband, because he is impotent, she says.' She added that her sister had already asked her about it some time ago." Furthermore, witness G. Falconnet: "I am personally convinced that the marriage was not consummated. My sister-in-law complained to me about the lack of consummation of the marriage; she spoke about it to my wife. She confided this to me about two years after the marriage. Three or four years after the marriage, a brother whom she (Gabrielle) loved, and who supported her, was afflicted with a chest ailment, of which he died. I saw her often during her brother's illness, and observing her deep affliction, I tried to console her, sometimes telling her that all was not lost and that her brother could live; sometimes that she would find compensations in marriage, when she had children. I remember the sorrowful tone with which she replied to me: 'I will never have children.'" The same is affirmed by Father Claudius Poulin, and by the nun Magdalena de Jesus, who said: "I knew from Gabrielle herself that her marriage had not been consummated." And A. De Lacour: "She told everyone that the marriage had not been consummated; so that in Longjumeau as well as in Paris, it became a matter of public notoriety." Indeed, the defender observes that, three years after the marriage, when elections were being held in Gallia for the selection of lawmakers, and Leo, being one of the candidates, was seeking votes, the publicly known lack of

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consummation of the marriage was openly reproached to him by those who favored other candidates, through the newspapers. "In 1893," says witness Leroy, "when Mr. Robelin presented himself for the legislative elections, the local newspapers alluded to his marital situation." And Father Barbé, the parish priest of the town, adds...

[*Latin ed. p. 519*]

PARISIAN. 519 Longjumeau affirms: "that the political adversaries of Mr. R, who were supplanted by him in the mayoralty, made it a weapon against him the indelicate manner in which he dared to marry this virtuous girl, knowing that he was impotent." It is not to be doubted, Gabrielam deceived the aforementioned witnesses; for, the advocate replies, she was, during all this time, or even entirely, unaware that she could be released from the marriage bond. "I presented her (after the separation) to a venerable religious, who, for the first time, indicated to her that she was in a case for a religious dispensation" (Sister Magdalena de Jesus): or, if she knew, despite the insistence of her parents, she did not consider dissolving the marriage. Therefore, he says, there was no reason for her to fabricate a lie about the consummation of the marriage. Indeed, not only Gabrielam, but even Leonern himself, were heard to confess to the lack of consummation of the marriage, at a time when suspicion was not present. This is testified by those who were present, while Leonern or someone spoke about children; or who showed some astonishment that he did not have children: "One could see, affirms the mother of the plaintiff, an indirect confession in a small scene that we often repeated for our amusement. We were talking about children, about little babies. Then he would change color, becoming purple or pale, he would appear nervous and annoyed, and with an eagerness that amused us greatly, he would divert the conversation. I witnessed this about ten times." And Father Bourgeat: "One day, when speaking to them (the spouses), - 'It is only a dozen children that are lacking in your happiness, I sincerely wish you them,' Mr. Roger Falconnet said to me: - 'Have you noticed the expression on Mr. R's face when you wished the spouses children? And he then went on to say to me... do not wish children to the spouses R. They cannot have any.'" - But those who were present, while Gabriela lamented her fate, urged the man to consult doctors: "I do not know," says the aforementioned F. Lemoux, "if he consulted doctors; but my daughter urged him to do so."

[*Latin ed. p. 520*]

520. The Most Holy Council had requested this several times, even before us in recent times. He responded hypocritically, saying, "We will consider it," and that was all. Eight days before the separation, we were all at their home in Longjumeau; my husband, myself, the young people, and Mr. R., the father. My daughter began to reproach her husband. She said to him:

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"It is finished; this cannot continue; I no longer wish to stay here; what am I doing here? First, I have no husband; you know very well that you cannot be one." Then he replied: "But, let that be; I will have myself treated."

Finally, the defender, in order to prove the non-consummation of the marriage, drew a strong argument from the very obstinacy of the man: for he said that, since the woman had been declared by the Supreme Pontiff to be free from the marriage on the grounds of the husband's impotence, and had only requested a solution to the marriage on the grounds of non-consummation, if the spouses had truly cohabited, the husband would have gone to the tribunal to refute, under oath, the accusation. Therefore, the advocate argues, the husband did not obey the judge's mandate, because he was unable to refute the accusation.

Turning to the second point, the advocate proves the non-consummation of the marriage by the physical argument of the woman's virginity: namely, that the doctors, knowledgeable about Gabriela's condition, were of the opinion that she was a virgin. Doctor Bucquoy said: "The condition of the genital organs is such that it can be affirmed that no large body has ever entered the vagina; therefore, the marriage has not been consummated. I conclude with certainty that the marriage has not been consummated." A similar judgment was given by Doctor Ferrand. "From this examination, I conclude that there is moral certainty that the marriage has not been consummated. I consider the non-consummation to be certain." These statements are corroborated by the excellent testimony of the renowned doctor Brouardel, who affirms: "It must be admitted that no body, however large, such as an erect penis, could have penetrated through the opening of the hymen."

It is, however, falsely objected that there were tears in the hymen.

[*Latin ed. p. 521*]

PARISIAN. Fifty-two-one folds were found. Indeed, the defender stated, that the hymen, by its very nature, is often torn; and it is not uncommon for it, while attempting to enter in vain, to tear the hymen of the man. Therefore, he argues, a woman is not proven to be corrupted by a torn hymen, unless it is shown that the man's member entered the vagina, and that the hymen was torn in the process. Regarding this matter, the defender argued, it is not for the defense nor for the judges to decide; but for the physicians, since medicine provides the standard by which this should be judged, and credence should be given to the physicians in matters of medicine. Indeed, the orator continued, the physicians, who have observed folds within the hymen of the woman, nevertheless unanimously declare that these folds do not detract from her virginity: "A careful examination, as stated by Dr. Boucquoy, of the membrane clearly visible shows that this hymen is perfectly intact; that the edge of the opening presents no scars and gives no indication of tearing. What I have just described is simply a natural

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conformation. The symmetry that we have observed, and especially the integrity of the edge of the membrane, is for me the physical and objective proof that this condition is not the result of external violence or of attempts, which, it seems, were made by the husband. The condition of the genital organs, despite the particular conformations upon which we have insisted, is such that one can affirm that a large body has never entered the vagina. This allows me to conclude with certainty that the marriage has not been consummated." Furthermore, Dr. Ferrand stated: "The separation of the labia reveals a well-formed hymen, without any trace of rupture, supple, and with slightly fringed edges. It is certain to me that if a male member had been introduced, we would have noticed some rupture.... That is why... I am certain of the non-consummation." And thus, the physicians felt, the orator said; indeed, in these folds, the congruence of form (in Greek, *symmetria*) wonderfully indicates the work of nature. "The hymen can offer..."

[*Latin ed. p. 522*]

522 FROM S. C. CONCILI: Small, congenital imperfections whose knowledge is necessary to avoid confusing them with the consequences of defilement. Regarding these congenital imperfections, their location, their shallowness, and their usual symmetry make their diagnosis easy with a little practice and prevent errors (Oesterlen in Maschka, treatise on medical law, vol. III, characteristics of virginity, pages 109 and 133). Furthermore, a scar, once the hymen is torn, cannot disappear completely. "Healing never leads to a complete restoration, but according to the size and extent of the laceration, it leaves a gap or an imperfection, whose margins, as a result of the healing process, become over time firmer and more resistant than the remaining hymen" (Oesterlen in Maschka, ibid., page 132). Furthermore, other proofs are available to the advocate to demonstrate the lack of consummation of the marriage, namely arguments drawn from the circumstances. The advocate recalls that the man, Gabriel, joined himself to the woman in order to more freely acquire honors: also, that it was known to all the inhumane ways in which the man treated his wife during their married life: "The actress said, 'It seemed to me that he had only taken me to run the house. He found it pleasant to have a kind woman to manage his household and to receive guests, perhaps to create a political position, and it did not seem that he had any other purpose in marrying me'" (Rev. P. Picard). Also, Lemaux states: "The spouses never spoke to each other; they sometimes sulked for two months. Father Barbé told me that he treated her like a little servant, especially in matters of money, with as much rigor as a domestic." And Father Poulin affirms: "He kept her in a dependence that went almost to the point of forgetting her dignity as a wife. She had neither money nor even the key to the cellar. She was forced to ask the servants for money. He had no regard for her." Therefore, the advocate concludes, it is not surprising that, in such discord between souls, the spouses did not

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cohabit.

[*Latin ed. p. 523*]

PARIS. 525. Then, the advocate observed that in this case, there was not merely a serious doubt, but rather a certainty of the man's impotence, since, he said, it was known to his closest relatives and male friends that he was impotent, and that the man himself had acknowledged his frigidity in matters of love, having promised to consult doctors when his wife vehemently reproached him. "He committed a bad act by marrying," said Father Bourgeat. "All his friends in Longjumeau knew that he should not have married." And F. Falconet: "Among the circles of both families, there was much pity for the young woman; it was well known that Mr. Leon could not be a husband for her. Yes, I heard that Mr. was absolutely impotent, and that this impotence was a congenital defect." "I heard," affirmed A. Champs, the man's cousin, "that Mr. R was impotent" among the circles of both families; and the witness Ferembach repeated: "The impotence was confirmed to me in a most fortuitous way, about the fourth year of the marriage. I was with a cousin of Mr. Leon. He said to me: 'Oh, that poor Gabrielle, she is not happy!' I pretended ignorance, and asked him: 'Why do you say that?' He replied: 'Because Mr. Leon is not like the others.'" And, with other details omitted, Father Barbé, the parish priest of the town of Longjumeau, said: "The political opponents of Mr. Leon, who were supplanted by him in the mayoralty, have made of his audacity in having dared to marry this honest young woman, knowing that he was impotent, a weapon against him. And now, even as he intends to run for the deputation, they are preparing to reproach him for it, as a crime, in public gatherings." Then, proceeding to the causes for dispensation, the advocate stated that not only ordinary causes, but also a special one, had been verified, namely, as he had previously demonstrated, the most serious doubt of the man's impotence, or rather, the certainty thereof, in which case, quoting from *De Luca, Theatrum Veritatis et Inquisitionis, lib. XIV, discept. 9, § 8*: "Dispensation seems rather to be a certain administration of justice, administered prudentially, under a more honorable title, in the manner of a prince."

[*Latin ed. p. 524*]

524 FROM the decrees of the Council, another reason is given for granting a dispensation, namely, the aversion of the spouses and the lack of any hope of reconciliation, which is considered a very serious reason for granting a dispensation, as Cardinal Coscius states in his *Separationes Matrimoniales*, Book XIV, Chapter 2, § 251. However, all the witnesses speak of this aversion of the spouses, acknowledging the cause to be in the husband, who not only disrespected his wife, but dared to challenge her religious principles. Finally, the most serious argument for granting a dis-

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pensation follows, namely, the danger of incontinence and fornication, as Coscius states in the same place, § 11. This is to be greatly feared, especially when we are dealing with a woman, who, as the witnesses say: "She has a very developed maternal instinct... The child would have made an excellent mother with another husband... It was only the love for the children that led her to marriage."

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENT. The defender of the sacrament vigorously argued that there was no proof of the non-consummation of the marriage. In the first place, he argued that there was a serious presumption of the consummation of the marriage, since the spouses lived together for seven years and more; and from the group of witnesses who testified about the actions of the woman, not one dared to affirm that there had been discord between the spouses; indeed, all readily admitted the public signs of conjugal harmony, which could not be concealed. Certainly, Father Francis, the president of the entire Order of the Augustinians of the Assumption, under oath, after stating: "In the autumn of 1896 (that is, after the separation of the spouses), I was in Livres when I received a visit from Madame Gabriel, who told me that the common life was peaceful and pleasant, and that there were never any scenes or difficulties within the home. Mr. Leon had rather advanced political opinions, but this did not disturb the peace of the home." Furthermore, Michael Bourgeat, the assistant pastor, who, although he showed himself to be very merciful towards Gabriela, nevertheless stated: "She (Gabriela) confessed to me that in order to initiate a cause..."

[*Latin ed. p. 525*]

PARISIAN. 525, in those latter times, she had attempted, in the presence of witnesses, to incite her husband against her, so that he might resort to violence against her. She believed that there was no other way to obtain a separation. Finally, unable to endure it any longer, on the eve or the day before a Sunday, when her husband was receiving political figures, she wrote to her mother that everything was finished and that she should come and take her away. The mother departed, but with the intention of persuading her to remain; but the daughter was so unhappy that she realized there was nothing left to do but to take her away – which she did. "I confess that in this circumstance, I admired the courage and tenacity of this poor girl." After these things, the advocate is not moved by what Gabriela recounts concerning the non-consummation of the marriage and the husband's impotence; for, says the defender, these matters were reported at a suspicious time, and are not in accordance with the truth. First of all, the matter was handled in a way that favored the parents. For no one can better understand Gabriela's conjugal life than her parents; and no one is more devoted to Gabriela's well-being than her parents. But, continues the defender, the parents "instead of helping her, did everything to keep her in this situation, believing

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they were fulfilling their duties." Then he proceeds, stating that simulation, as stated in Rota Decree 791, n. 17, part 18, recently, is close to falsehood, from which the religious girl always shuns. But concerning Gabriela herself, Michael Bourgeat testifies: "She confessed to me that, in order to 'create a cause for separation, in those latter times, she had attempted, when they were present as witnesses, to incite her husband against her, so that he might resort to violence against her.'" Finally, if Gabriela truly recounts that the marriage remained unconsummated due to the husband's fault or impotence, there would be no reason for Gabriela to feign her husband's cruelties. For, to obtain a separation, "the grave injury resulting from the non-consummation" is quite sufficient. Furthermore, an examination of the actress's body was made by the doctors Brouardel,

[*Latin ed. p. 526*]

526 FROM THE DECREE OF THE HOLY CONGREGATION of Bucquoy and Ferrand! This does not move the defender of the marriage, because it lacks the essential precautions prescribed by law, so that such examinations can be considered valid. Indeed, in the Instruction of the Holy Congregation of August 22, 1840, it is stipulated that the body of the woman must be examined by at least three midwives; and that this examination must be carried out in such a way that each midwife submits a written report of the examination, and undergoes a judicial examination, before she can know the testimony of the other midwives; it is also stipulated that at least two doctors must instruct the midwives who are to examine the body, and that they must prepare and judge the midwives' report. Therefore, at least five witnesses must be used; namely, three midwives and two doctors; and to prevent any dangers of fraud or collusion, it is stipulated that each witness must give his testimony before he can inquire about or suspect anything about the testimony of others. But in the present case, not even the thought of midwives was entertained, but only two (the doctor Brouardel is extrajudicial) were used in the trial, who did not act separately, but completed the task together: they were content to examine the female genitalia, although, as has been demonstrated many times, the entire body must be examined. Moreover, says the advocate, the doctors are not very concordant: and what is more, not even one dares to conclude, based on the principles of medical art, that she is a virgin; but they speculate about her virginity based on what they have heard from the actress herself, exceeding their mandate; while they, as experts in their art, should be witnesses of what they see, not of hearsay. Furthermore, continues the tutor of the marriage, the doctors Brouardel and Bucquoy, who are experts on the hymen, testify that they found a laceration on both sides of the lower part, which was either caused by a surgical instrument, or indicates a hymen endowed with a singular form by nature. But the doctor Ferrand sees neither a laceration nor a singular form of the hymen. Indeed, he says: "The separation of the labia reveals

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to us a hymen that is quite well formed."

[*Latin ed. p. 527*]

PARISIAN. 527 Indeed, the physician Brouardel reports: "On both sides, at the lower portion, there is a small notch. These may result from a congenital conformation, or have been produced by a rupture of the inner edge during attempts at coitus. Their symmetry, their identity, and the absence of any scar tissue, favor the first hypothesis, but it is impossible to be absolutely certain on this point." The examining physician, Bucquoy, likewise testifies: "The orifice of the vagina is closed by a membrane called the hymen, which presents a particular disposition; instead of having a perfectly circular orifice, as one observes on both sides, there is a sort of notch which might suggest incomplete myrtiform caruncles. But a careful examination of the membrane, when spread out before the eyes, shows that this hymen is perfectly intact; that the edge of the orifice presents no scar tissue and gives no indication of a tear; that this disposition therefore seems undoubtedly to be the result of a particular congenital conformation, and not the consequence of the various contacts it may have undergone." Conversely, the expert Ferrand observes a fissure, excluding any particular disposition of the hymen. For he says: "The examination of the genital organs allows us to note that the vulva is intact and without alteration. The separation of the labia reveals a hymen that is quite well formed, without any traces of rupture, supple, and with slightly fringed edges." Nevertheless, the defender notes that all the examining physicians acknowledge the dilated vagina. Brouardel states: "It is possible, without great difficulty, to insert the first phalanx of the index finger through the orifice of the hymen... The exploration of the genital organs is easily accomplished without provoking a spasm. The condition of the genital organs: the semi-dilatation of the orifice of the hymen, seems to indicate that there have been attempts at coitus, etc." The physician Bucquoy recalls: "The orifice of the hymen is wide enough to allow..."

[*Latin ed. p. 528*]

528 EX S. C. CONCILII: "Facile est digito in vaginam satis amplam et flexibilem intrandi"; peritus Ferrand recolit: "Orificium centrale est dimensionis mediae et permittit facile penetrationem digiti in vaginam." Ad hoc additur, quod res est de matrimonio contracto ab anno 1890, et exploratio virginitatis facta est septem vel octo post annos. Et igitur, vasa muliebria, ait Zacchias, naturaliter interea temporis coangustata sunt. Quocirca, iuxta vinculi defensorem, mirum non est quod medici periti, a iudice adhibiti potius quam in artis praesidiis, in dictis Gabriae confidant: "Haec Domina (ait Ferrand) nobis declaravit: fuisse maritam, ille octo annos cum marito suo. Durante hoc tempore, ibi fuerunt, ex parte hujus ultimi, quaedam tentamina adiunctionis sexualis, sed sine

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eo ut membrum virile penetraret in canalem vaginale." Quandoquidem, urget matrimonii assertor, Gabriae plenam fidem habentes, periti medici toti in eo sunt, ut violati claustri virginalis refutant argumenta, quae post diuturnum temporis spatium perseverant, et concludunt: "Est certitudo moralis quod matrimonium non consummatum est." Imo inquiunt: "Non sunt signa contraria ad non-consummationem, et, pro me, habeo opinionem moralem certam de hac non-consummatione." Nec meliori omine orator confidit in iuramento actricis ac septimae manus. Etenim, ait, cum certa sit coniugum condormitio, nec alterutrius sit impotentia in probatis, nulla ratione, praeter aspectum corporis mulieris, facile demonstratur inconsummatio matrimonii. Ad rem De Luca de matr. disp. 9, n. 15: "Magna apud me erat difficultas, quod ageretur de vidua, quae cum viro iam dormierat; ideoque non cognoscebam quomodo convincerem negativa consummationis matrimonii; licet enim id non sit omnino impossibile iustificandi, attamen videtur nimis difficile, adeo ut sit difficultas, quae quodammodo fraternizet cum impossibilitate."

[*Latin ed. p. 529*]

PARISIAN. 529. Finally, the defender of the sacrament concludes that, if it is given and not conceded, that marriage has not been consummated due to the husband's impotence, then either a provision must be made so that the husband may have the power to defend himself and the marriage against that which he now contends: or the relaxation of the marriage cannot be granted without the clause: "it is forbidden to the husband to enter into other marriages." Therefore, having considered these matters from various angles, the question was raised as to whether consultation with the Most Holy Fathers should be sought regarding a dispensation concerning a marriage that is valid but not consummated.

RESOLUTION. The Sacred Congregation, after deliberation on July 17, 1899, decided to respond: Affirmative.

POLICASTRO. SUMMARY OF FACTS. There are two parish churches in the town of Rivelli, in the diocese of Policastro; one is of Saint Mary of the Podium, the other is of Saint Nicholas. The first was, in ancient times, of the Greek rite, then it passed to the Latin rite, and was raised to the status of a collegiate church, adorned with canons, although now, for reasons unknown, it no longer enjoys this honor. The other, of Saint Nicholas, has always observed the Latin rite, and is simply a parish church. It is not known which of these churches is the older. Both churches have their own dependent churches, both within the town and outside of it; both have parishes that are not limited to certain regions, but are comprised of families that reside here and there within the town. Foreigners who come to reside in that town can choose which parish they prefer. Both churches have a baptismal font and their own territory. Acts, Volume XXXII, page

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CCCLXXXI, 34.

[*Latin ed. p. 530*]

530 The Council of [the city] decreed that the two parishes should be distinct in their territory, so that the sacred processions or ceremonies should be conducted separately by each. Furthermore, each parish, besides the cantor and the vicar, has a sufficient number of prominent priests, and a parish priest who holds the title of archpriest, both parish priests and archpriests being elected by mutual agreement, and both have equal authority in their own church, and receive equal benefits in funerals and the administration of the sacraments. Reciprocally, the clergy of both parishes have access to each other's churches, and a cross is erected in each, with priests of both clergy walking together, with only a difference in precedence of time observed among them. The archpriests also walk together, wearing their stoles, except that the archpriest of St. Nicholas holds the right hand, and the archpriest of St. Mary holds the left hand. It would be tedious to recount everything that demonstrates that, with a few exceptions, these two archpriests and the two parish churches are equal. It is scarcely possible to recount the questions, the disputes, and the bitterness of spirit with which, over almost all of time, the clergy of both parishes have argued about the rights of one or the other, each claiming to be superior, and to have greater authority, and to be of higher rank. Consequently, in this intense rivalry, the divine services were often disturbed, the sacred ceremonies interrupted, the worship of the temple violated, and even the august Sacrament itself was treated with disrespect. Amidst these dissensions and constant conflicts, a sodality called the "Purgatorial Sodality" was established in the same city in the year 1652. This sodality, at its very foundation, declared itself independent of both parishes. This independence was ratified by both parish priests, present in fact for future times, in the name and on behalf of their respective clergy. Meanwhile, the disputes and disagreements between the two clergy showed no end, nor any remedy. To avoid these, the clergy of St. Mary of the Podio petitioned the Holy See, so that each clergy could perform separately the sacred rites that were formerly performed together. However, this was not granted, for the doubt arose: "Whether the ordinary processions on the days..."

[*Latin ed. p. 531*]

POLICASTRO. 531. Concerning St. Mark's, it was to be determined whether the Rogation ceremonies and those for the Body of Christ should be performed jointly by both the clergy of St. Nicholas and St. Mary's, according to custom, or whether the requested permission should be granted to the clergy of St. Mary's to perform them separately; the response, given on January 22, 1746, was: "Affirmative to the first part, and negative to the second." Not long afterward, the Sacred Congregation, by a rescript

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dated November 23, 1748, forbade, under penalty at the bishop's discretion, the clergy and archpriest of St. Nicholas "to designate the aforementioned church of St. Mary of Podio as a filial church." However, "these decrees of the Apostolic See, intended to promote the well-being of the people and to foster a spirit of emulation, proved ineffective: indeed, disputes were repeatedly stirred up, sometimes resulting in violence, with hands even laid upon sacred objects, the banner of one or the other church being carried in procession, and the most sacred image of Christ the Savior being snatched away with hostile intent, the sanctity of the ceremonies, prayers, and the very place itself being disturbed by arms, clamor, and tumult. And among other things, if this were not a matter of sacred concern, to which we are bound by our duty, it would more likely provoke laughter than indignation, as the bishop reports, that two archpriests, while proceeding in their robes during supplications, sometimes wished to recite the prayers at the same time after the longer litanies, and that, as one of them sang the prayers with a louder voice, he considered himself more worthy than the other, and thus sought to assert the superiority and rights of his own clergy." To remedy these offenses, the bishop of Policastro, in letters dated May 24, 1829, ordered "that during the solemn Rogation ceremonies, the abuse of reciting the prayers at the end of the longer litanies by two [persons] be eliminated... that the aforementioned prayers be recited by the one who is to celebrate the solemn Mass of the Rogations in the first church, and not by two, as has been the custom contrary to the sacred rites, and as is practiced throughout the Catholic Church." In the following year, concerning the Rogation supplications to be held on the feast of St. Mark the Evangelist, the bishop again ordered that the prayers be recited by the celebrant. If these things...

[*Latin ed. p. 532*]

532 Having disapproved of the execution of the decree of the Council, he ordered, by letters dated April 21, 1830, that the two clergy should separately hold their processions in the districts assigned for the instruction of the Christian people. Against these decrees, the clergy of Saint Nicholas appealed to the Sacred Congregation, raising the following doubt: "Whether and how the prescriptions issued by the bishop by letters dated May 24, 1829, and April 21, 1830, are valid in this case, etc." On August 3, 1833, the Sacred Congregation postponed its decision, and, as a provisional measure, ordered that the bishop's letters of April 21, 1830, be observed. This matter was not subsequently brought up again. As a result of this decision of the Sacred Congregation, the sacred processions of Rivelli were held separately. Before the year 1833, on the feast of the Most Holy Body of Christ, a single supplication was held by the clergy of Saint Nicholas, and the clergy of Saint Mary and the sodality of the Purgatory participated in it. Also, on the Sunday within the octave of that feast, a single supplication was held by

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the clergy of Saint Mary, and the clergy of Saint Nicholas and the sodality of the Purgatory then joined in it. After the year 1833, two processions were held on that feast day and on the Sunday within the octave: and from that year, the sodality did not participate in either procession. Finally, in the year 1877, the confreres, out of piety, desired to participate in those supplications, and, knowing that they were subject to neither clergy, they decided to alternate, each year on the feast of the Most Holy Body of Christ, in attending either the procession held by the clergy of Saint Nicholas or the procession held by the clergy of Saint Mary; and to do the same on the Sunday within the octave. Thus, they believed that they could protect their own freedom and avoid offending either clergy. Therefore, that year, they attended the procession of the clergy of Saint Nicholas on the sacred day of the Most Holy Body of Christ; and on the following Sunday, they attended the procession of the clergy of Saint Mary. In the year 1878, they attended the procession held by the clergy of Saint Mary on the feast of the Most Holy Body of Christ; and when they tried to participate in the supplication held by the clergy of Saint Nicholas on the Sunday within the octave, they were not admitted, the clergy objecting.

[*Latin ed. p. 533*]

POLICASTRO. 555 "The confraternity shall, each year, on the very day of the feast of the Most Holy Body of Our Lord, attend the supplication at the church of St. Nicholas. Since the clergy of St. Nicholas could not consent to this, lest the confraternity lose its former freedom, they solemnly decided, as they had already agreed among themselves, and which they could not effect unless they did so. Therefore, in the year 1880, on the twenty-fourth day of the month of May, in a meeting held, they decided: The confraternity shall participate in the procession on the feast of Corpus Christi, alternating each year, beginning this year from the parish of St. Nicholas; on the following Sunday, the parish shall be visited, which was not visited on the very day of Corpus Christi. This decree was ratified by the bishop of Policastro with his authority, in the same year, on the twenty-second day of the month of July. However, since the clergy of St. Nicholas conceded or remitted nothing on this account, the confraternity appealed to the bishop of Policastro, requesting that it be judicially recognized as free and exempt from the subjection of both Rivellese clergies, and that what it had decided regarding its participation in the sacred ceremonies in the year 1880 be confirmed by a judicial sentence. This petition of the confraternity was accepted by the judge of Policastro, who issued a sentence on the twelfth day of the month of May in the year 1896. Against this sentence, the clergy of St. Nicholas appealed to the metropolitan tribunal. The twenty-eighth day of the month of November of the same year, 1896, was set for the judgment of this cause. The Confraternity of Purgatory, having been unable to gather certain necessary documents in the meantime, requested

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a delay: to which request the very court of Policastro, before the judge of Salerno, added its supplications. However, nothing was obtained, and on that very day, the judge of the archiepiscopal court delivered his sentence: in which he revoked the sentence of the Court of Policastro, deciding that the Confraternity of Purgatory must constantly attend the church of St. Nicholas for the sacred procession on the feast of Corpus Christi. Against this sentence, the Confraternity of Purgatory appealed to the Holy See, explaining that the same sentence should be abrogated and declared invalid."

[*Latin ed. p. 534*]

534 FROM THE HOLY GENERAL COUNCIL. But the clergy of Saint Nicholas contend that the aforementioned association was wrongly appealed, in this matter, because it was appealed against before the judgment, against the association, was pronounced, and before the association was notified by the official of the court of Policastro. Indeed, the judgment was issued on November 28, 1896; on December 4th, the judgment was sent from the court of Salerno to the Ordinary of Policastro; on the following day, December 5th, the association appealed to the Sacred Congregation of the Holy Office; and on the 9th of the same month, the judgment was notified to the association by the official of the court of Policastro. Therefore, the association appealed to the superior court after the judgment had been promulgated and sent to Policastro, but before the same association had been notified.

SYNOPTIC ACCOUNT: The members of the association, contrary to the judgment of the Metropolitan, hastened to appeal in the matter of the appeal, but the clergy of Saint Nicholas contend that the aforementioned association was wrongly appealed, because it was appealed against before this judgment was notified to the aforementioned association by the official of the court of Policastro. Indeed, the judgment was issued on November 28, 1896; on December 4th, the judgment was sent from the court of Salerno to the Ordinary of Policastro; on the following day, December 5th, the association appealed to the Sacred Congregation of the Holy Office; and on the 9th of the same month, the judgment was notified to the association by the official of the court of Policastro.

Furthermore, the clergy of Saint Nicholas insist that the members of the association did not initiate the appeal later nor did they pursue it within the legitimate time; because they appealed five months after the judgment was issued and petitioned the Apostolic See, namely on May 7, 1897, which the court of Salerno therefore denied; and then, they were even more negligent in pursuing the appeal, so that on May 17, 1898, the Sacred Congregation issued a decree: "The Bishop of Policastro should warn the association which appealed from the judgment of the Metropolitan court to the Sacred Congregation, that unless it presents the documents and judgments in a copy and prosecutes the appeal, the judgment of the second grade shall

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stand."

DEFENSE OF THE CLERGY OF SAINT NICOLAS.

[*Latin ed. p. 535*]

POLYCASTREN. 535. Thus, the negligence of the members in pursuing the appeal did not cease; until, at the end of the preceding year, a decree was issued, which was placed on file, concerning the formulas to be requested by the representatives of the parties who had contested [the matter]; namely: I. Whether there is a place for an appeal in this case. And, to the extent that it is affirmative. II. Whether the sentence of the archiepiscopal court of Salerno is to be confirmed or annulled in this case. Regarding the first question, the advocate for the clergy notes that three terms (which the lawyers call "fatal terms") were granted to the appellants. The first is for initiating the appeal (the "fatal term" for initiating the appeal); the second, for instituting the cause (the "fatal term" for introducing the case before the superior court of appeal); the third, for pursuing (the "fatal term" for pursuing and concluding the appeal) before the court of appeal. The one who later appealed is concerned. "For when, after a space of ten days, the sentence passes into the authority of the judged matter, he who does not seek assistance for the appeal within that time is denied access to appeal." (Innocent III, chapter 15, on sentences and matters). The cause must be instituted within six months, and it must be pursued within a year. "Furthermore, the time defined by law for presenting the case to the superiors, and for indicating the appeal to the judge to whom it is addressed, is six months (I. 2. C. de tempor. appellat.), which begins to run, not from the day of the sentence, but from the time the appeal is interposed." (Pirhing, *ius, Can. t. II. tit. XXVIII de appel.*, § 145). "Just as a judicial appeal, so also an extrajudicial appeal, must be pursued and concluded within a year from the day of its interposition, or from the day the grievance is filed, where an appeal is made from a future grievance. But if the appellant does not do so when a just impediment ceases, his appeal must be considered abandoned." (Clementines, like appeals, 3 on appeals). However, the advocate insists, the appeal was interposed in May (on May 7, 1897); five months after the Archbishop, having informed the members through a messenger (on December 9, 1896), of what he had judged. And, according to the advocate, the appeal proposed is not beneficial.

[*Latin ed. p. 536*]

556 From the records of the Sacred Congregation. Regarding the matter, the president clearly states that the association (on December 2nd) decided to appeal: "The undersigned, by the authority granted by the Brothers of the Congregation through a deliberation of the 2nd of the current month, while protesting against the illegal and improper procedure followed by

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this Most Reverend Metropolitan Curia, feeling aggrieved by the judgment published by the same on the 28th of the aforementioned month, appeals in all forms permitted by law to the Sacred Congregation of the Council." However, the patron continues, the members, on December 4th, were unaware of the outcome of the case, and they anxiously inquired about it by telegraph from the Archbishop. Furthermore, the advocate contends that the association did not observe the proper time for filing the appeal. Indeed, in August, the members appealed to the Pope, while the Archbishop had already pronounced the judgment in December. Therefore, they instituted the cause, after nine months, instead of within six months, as required. Consequently, he concludes, the Archbishop was justified in denying them the right of appeal; and even if he had unjustly denied it, the members were still obligated to pursue the appeal, lest they lose their legal rights: "If the judge, within the term prescribed by him, does not grant the appeal requested by the appellant, the appellant may pursue his appeal from that time, as if the appeal had been expressly denied to him." (Clement. Quamvis 2 de appell.). Moreover, the advocate insists, the members were negligent in pursuing the appeal, as they waited thirteen months before taking steps to have it heard, and only in September of the following year did they ensure that it would be pursued. Then, addressing the merits of the case, the advocate does not hesitate to state that it is the duty of the members to participate in the proceedings. "The Bishop can compel the Brothers to convene through customary processions, under penalties at his discretion" (Ferraris Bibl. can. voc. processio § 84). The Bishop did not deny this duty in his judgment. "We declare the Congregation free to choose, on the day of Corpus Christi, which of the..."

[*Latin ed. p. 537*]

POLICASTRO. The sum of £537 is due from two parish churches, and it is fitting that they should contribute to fulfill their duty of participating in the solemn processions. Hence, it is evident, even by custom, that the members should attend the Church of St. Nicholas, which is the principal church. For the patron of the church of St. Nicholas claims that it enjoys the right of matriculation, and to this end, he cites the act of the Visitation: "Having, during this visitation, found many observances and customs that have been observed from ancient times among the Reverend Clergy of St. Nicholas, the mother church and first church of this town, and the Clergy of St. Mary of Poggio, also of this town, a filial and obedient church to that of St. Nicholas, we confirm these observances in this visitation and order that they be observed inviolably. All of these customs and observances we confirm and order to be observed inviolably, all the more so because we have heard from both parties, who have unanimously accepted these observances and have obligated themselves to observe them in the future." Furthermore, another decree from the year 1601 states: "The Rev-

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erend Clergy of St. Nicholas must be preserved and ought to be preserved, as is customary in previous and all subsequent visitations, by the Reverend Archpriest and Clergy of St. Mary." Moreover, it was established: "In the ordinary processions of Rogations and of the Body of Christ, the Clergy of St. Mary must go to the church of St. Nicholas, and from there proceed processionally, and then return to the same place." (From the Decree of the Most Reverend Bishop, dated November 26, 1692). Furthermore, the law states: "Ordinary processions... as well as extraordinary processions, convened for some public or general cause, cannot be assembled anywhere other than in the church of St. Nicholas, and from there they must proceed, and return to the same church, or to another church approved by the Archpriest of St. Nicholas, and be dissolved there." (From the decree of the Most Reverend Bishop of Policastro, dated October 31, 1601). "In all processions and ceremonies, the Archpriest and Clergy of St. Nicholas must precede, in accordance with the tenor of the aforementioned decree and custom." (From the decree of the Most Reverend Bishop of Policastro, dated October 31, 1601). "The Reverend Archpriest and Clergy..."

[*Latin ed. p. 538*]

538 FROM THE DECREES OF THE HOLY COUNCIL: "It is to be maintained and preserved that the Archpriest with the Latin clergy of Saint Nicholas should precede." (From the decree of the Most Reverend General Chapter, Cavalerio, dated November 9, 1649). "In all processions and other such processions, the Archpriest with the Latin clergy of Saint Nicholas shall precede." (From the decree of the Most Reverend General Chapter of Aragon, and Policastro, at the beginning of the sixteenth century). "On the eve of Saint Nicholas, the Reverend clergy of Saint Mary shall not be called to go to said mother church of Saint Nicholas, but shall remain for evening prayer and the sung Mass; and the Archpriest of Saint Nicholas shall give to each priest of the aforementioned church of Saint Mary seven palms of common wax candles for devotion. In the procession of Saint John, the clergy of Saint Mary shall call upon the clergy of Saint Nicholas; and the clergy of Saint Mary shall not be permitted to process separately without our permission." (From the decree of the Most Reverend Bishop De Rosa, dated November 20, 1892). "The clergy of Saint Mary shall be obliged to send their acolyte with a lantern to take the Holy Oils from the Cathedral; and upon arriving with said Holy Oils, they shall be placed in the chapel of Saint Lucy outside the walls of said town, and the clergy of Saint Nicholas, together with that of Saint Mary, shall unite in the main square of said town, and together they shall go to take said Holy Oil, and bring it to the parish church of Saint Nicholas, and there the Archpriest of Saint Mary shall take his portion from the Archpriest of Saint Nicholas." (From the aforementioned decree of Bishop De Rosa). Because the adversaries object that these customs were not at all proven by Your Eminence, the advocate has noted

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that Your Eminence has always approved such customs whenever called upon in a dispute. Regarding this matter, the following rescript from the Holy Congregation is relevant to these doubts: "Whether the processions on the days of Saint Mark, the Rogations, and the Body of Christ should be held jointly by both clergy, of Saint Nicholas and Saint Mary; or rather, whether the request of the clergy of Saint Mary to perform them separately should be granted?" "Affirmatively regarding the first part, negatively regarding the second part." "Whether said processions should begin and end in the church of Saint Nicholas..."

[*Latin ed. p. 539*]

POLYCASTREN. 539. It is to be held that the clergy of Saint Nicholas should proceed under their own cross before the clergy of Saint Mary: or is the customary practice to be observed in all cases? "The customary practice is to be observed." In the feast of Saint Nicholas, is the clergy of Saint Mary, even if not invited, to attend the church of Saint Nicholas according to custom, and to participate in the first vespers and the solemn Mass, and is the clergy of Saint Nicholas to distribute the customary candles to each member of the clergy of Saint Mary on that occasion? "Affirmatively, in both cases." Is the clergy of Saint Nicholas, even if invited, to attend the church of Saint Mary, and to participate in the first vespers and the solemn Mass of the Assumption of the Blessed Virgin Mary? "Affirmatively, provided the clergy of Saint Nicholas are invited." Is the Archpriest of Saint Mary to receive the sacred oils from the Archpriest of Saint Nicholas, or rather, is it permissible for him to obtain them from the Cathedral Church? "The customary practice is to be observed." And to which church does the right belong to ring the bells on the Sabbath? "It belongs to the church of Saint Nicholas, and the time is to be designated by the Bishop." (Polycastren, January 22, 1746 - questions 1, 2, 7, 8, 10, 11). Furthermore, the speaker explains why the Sacred Congregation has granted the parish to the church of Saint Nicholas, noting that it has not thereby granted greater authority to that church, nor an improper parish. He cites De Luca: "The proper and natural form of parish is verified in that church to which other churches are truly daughters and dependent, because, indeed, when a single parish church exists in a place or district with a large population, and one church is not sufficient for the people, other churches are erected with the division or separation of boundaries or territory and people." (De Luca, *Theatrum Veritatis et Justitiae*, Book III, p. II, on parishes). But there is another, which they call an improper parish, which consists in primacy; "a more remote and improper parish resulting from the fact that, either by reason of antiquity or for some other reason, a church is greater in the place." (De Luca, ibid., discourse 42, § 12). "Indeed, every form of parish, even the first (improper) ... among other equal ones, is much lower in rank

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and quality."

[*Latin ed. p. 540*]

340 The Council's decree holds precedence: both in the matter of precedence, and also in order that processions and funerals, or other general solemnities, may be regulated, or celebrated therein; and also in certain matters pertaining to those things which are done by individuals, as is especially the case with the ringing of bells on the holy Sabbath." (From Lucca, ibid.). Indeed, before the Sacred Congregation, the question of true primatiality was raised: namely, "Does the Church of St. Nicholas truly have primatiality with respect to the Church of St. Mary of Podio in this case? And under what penalty should the Archpriest and clergy of the aforementioned Church of St. Nicholas be prohibited from designating the aforementioned Church of St. Mary of Podio as a filial church?" However, the advocate noted, with other arguments, that the primatiality of the Church of St. Nicholas over the Church of St. Mary is certainly proven, because only one supplication was held in the town over two centuries, and this was held by the Church of St. Nicholas, to which both the clergy and the confraternity belonged. The majority of that church, the advocate said, is even now confirmed by the Regulars, according to this testimony: "I, who am undersigned, of the Province of the Minor Observants, certify that the Religious community existing in this town of Rivello, in the procession of the Most Holy Body of Christ, on the Thursday of the feast, has always participated in the procession held by the clergy of St. Nicholas, and on Sunday within the octave, in that of St. Mary, because it has been an ancient custom to prefer, even in the procession of the Rogations, the Church of St. Nicholas, because it is the mother church and the greater one. This very ancient custom has always been practiced by the Religious community of the Convent of St. Anthony of Rivello, and also by myself when I was in residence." From this very ancient observance, the advocate inferred that the confraternity had long been bound to it, so as not to deviate from the established custom; especially because: "Custom holds a place above all in matters of honor" (Rota in Fanen. praecedentiae coram de Arguilles diei 1 Iul. 1646, p. X, dec. 254 § 15 rec. - and coram Sacrato m Romana praec diei 18 maii 1620).

[*Latin ed. p. 541*]

POLICASTREN. 541 p. IV, t. II, § 4, rec. - before Ubaldo in Colonien, on the preceding day of June 9, 1627 p. 5, t. 1, dec. 85, § 5 rec). "In matters of precedence, custom is everything, and is considered the ultimate regulator" (De Luca, *Theatrum veritatis et iustitiae de regulis*, discourse 19, book XIV, p. I, n. 7). The advocate states that the witnesses of this custom are the very members who deliberated: "The Congregation, in its conclusion of May 24, 1880, decided that from that year onward, it would participate for

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one year in the procession of the Church of St. Nicholas, for another year in that of St. Mary, and so on, in turn." Furthermore, the advocate presents the *Liber Clericus* as a witness, which, according to the Bishop, requested that the custom be maintained without delay. "This Reverend Clergy objects to the actions of this Prior of Purgatory, because with his usual malice and deceit, he has sought to remove an ancient right that this Church of St. Nicholas possesses, namely, for the brothers of this Confraternity to participate in the procession of the Body of Christ on the day of the feast, and on the Sunday within the octave, to proceed to the parish of St. Mary. This has been the practice since his institution."

When the opposing side argues that such a custom should be considered among those that are facultative, the advocate responds, citing the well-worn legal maxim, "In facultative matters, there is no prescription." He argues that such a custom cannot be considered facultative, because other factors clearly indicate otherwise. He maintains that custom holds if it is clearly apparent that those who acted did so with the intention of obligating themselves in some way. Furthermore, he argues that it was the belief of the members that they were obligated to participate in the procession of the Church of St. Nicholas, and that this belief, according to the advocate, is undoubtedly demonstrated by the long and uninterrupted observance of this custom. Indeed, "A facultative presumption is excluded by the multiplicity of acts performed over a long and continuous period of time" (Rota before Merlino in Piacentina, preceding day of June 27, 1633, p. VI, dec. 224, n. 8, rec). "A presumption of facultative action is excluded by the multiplicity of acts and by continued possession over a long period of time."

[*Latin ed. p. 542*]

542 FROM THE DECREES OF THE COUNCIL (Rota before Ubaldo in Cologne, on the preceding day of June 7, 1627, p. v. t. 2, dec. 85 n. 8, repeated). "Where the memory fails, the privilege of a voluntary act ceases" (Rota in the Visitation of Calaguritan Juris, before Pirovano on November 26, 1611, p. III, dec. 389 n. 4, repeated). – With these judgments, Scarfantonius teaches: "The controversy arises whether the ordinary magistrates can be compelled to access the sacred functions in the Cathedral to continue in performing their assistance, and although it seems that such assistance should be given as a voluntary and gracious act, and therefore not capable of imposing an obligation, nevertheless, when the time of the assistance exceeds human memory, and we are in doubt whether the act proceeded from mere will or rather from obligation, the interpretation must be taken which favors the Church, since it is the more favorable cause. Moreover, it is customary that, given a multiplicity of acts performed over a long period of time, the presumption of a voluntary act remains, since continued grace and permission are not presumed. – Therefore, until it is determined

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whether the act pertains to grace or to obligation, support must be given to the possessor." Scarf. ad Ceccop. lucub. canon. Lib. I, Tit. 15, § 22-25. DEFENSE OF A SODALITY FROM PURGATORY. Emperor Justinian extended the time for filing an appeal to ten days: "Today, everyone is given a period of ten days, to be counted from the recitation of the sentence." (Auth. today, Cod. de appellationibus; novel. 23 cap. 1). This ten-day period was excepted by the sacred canons, as testified by Innocent III, who wrote to the bishop of Constance: "Since, after a period of ten days, the sentence passes into the authority of a judged matter, he who does not seek recourse for the purpose of a vocation within that time is denied the right to appeal" (cap. 15 de sent. et reiudicata). Since it would be unjust for this term to apply even against those who are ignorant and therefore unable to act, hence Boniface VIII decreed that this ten-day period should begin from the day of knowledge of the grievance.

[*Latin ed. p. 543*]

POLYCASTREN. 343 which states: "Concerning any extrajudicial acts, in which an appeal can be interposed, whoever considers himself aggrieved and desires to have the grievance imposed upon him revoked through the benefit of appeal, within ten days after becoming aware of it, if he wishes, shall appeal." (Chapter VIII, on appeals, section 6). This, which Boniface had established concerning extrajudicial acts, with the same reasoning, has also been applied to judicial acts: thus, the ten-day term for appealing from an adverse judgment, if it was issued in absentia, should begin, not from the day the judgment was promulgated, but from the day the condemned party became aware of it. And legitimate knowledge of the judgment occurs through its notification; hence, the condemned party is given the opportunity to appeal, up to the tenth day from its notification. However, it is clear that these provisions, which are made in favor of the appellant, should not be twisted to the detriment of others, so that it is said that he who is condemned in absentia, before the judgment is communicated by a messenger, appeals to a higher judge, and that this appeal is futile. I readily concede that no legal force should be attributed to a provocation that presents nothing certain and definite, such as if someone were to say: "I appeal against all judgments, issued by any authority, at any time, that are imposed or to be imposed upon me." But a provocation is valid when it is made against a specific judgment, even if it has not yet been legitimately notified. But this is the case with the provocation of our association to the Sacred Congregation. Therefore, we are not dealing with some vague and indefinite provocation: for with these words, the judgment against which the provocation is made is precisely defined; and it is clear that he who provokes has thoroughly understood the judgment: for he knows that it was issued "on the 28th day of the month of November"; he knows that through it "that which was issued in favor of the aforementioned associ-

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ation by the Most Reverend Diocesan Court was annulled"; he adds that the power to provoke was requested by the moderator of the association, and that it was granted to the confreres "by a decision of the 2nd day of the month" (namely, the month of January). Could all of this have been said and done?

[*Latin ed. p. 544*]

5M EX S. C. CONCILII sent., if the opinion of the Salernitan court concerning the moderator of the Sodality of Purgatory and the members had remained entirely unknown? Therefore, it is clear that the appellant was aware of the opinion at the time he appealed. Although it was not necessary for me to demonstrate this. For it is permitted by canon law, even before a judgment is publicly declared, to appeal to a superior judge based on a certain threat from a judge, as is inferred from chapter 40, concerning appeals, which reads as follows: "When the cause ceases, the effect also ceases. Therefore, we decree that, whether an ordinary judge or a delegate has issued a decree or made a statement that would hinder the execution of a mandate against one of the litigants, and if, using sound judgment, he ceases from the effect of such a decree or statement, he may freely proceed in the knowledge of the cause, notwithstanding if an appeal has been made in such a decree or statement." Indeed, even before the commencement of a trial, an appeal against a future judgment is permitted, as stated in chapter 5 concerning appeals, with these words: "If... an appeal has been made against a burden and before the commencement of the lawsuit, such an appellant shall be heard, because the sacred canons generally permit appeals even outside of a trial." Therefore, Schmalzgrueber writes in title 28, book 2, decree, number 17: "An appeal can be made outside of a trial, even against a future burden that has not yet been inflicted or threatened." Therefore, if it is sometimes permitted to appeal to another judge even before a judgment is publicly declared, or even before the commencement of a trial; how much more so is it permitted after a judgment has been publicly declared, even if that judgment is not yet known to the one who is appealing? Therefore, the fact that the appeal was made before the legal declaration of the judgment does not detract from the validity of our appeal: it would be absurd if someone were to suffer a detriment because, in his affairs, he was not merely not negligent, but rather, was almost excessively diligent. It cannot be objected that the appeal concerning the sodality called "of Purgatory" is not to be considered an appeal, because it was not continued before the superior judge within the time established by the canons. If, for that purpose, space is granted...

[*Latin ed. p. 545*]

POLICASTRO. 545 days, or for a just cause, two years (chapter 5, concerning appeals); however, if someone, within such a time, has postponed

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pursuing an appeal due to a legitimate impediment, even after the lapse of two years, he must be admitted to pursue it. Thus it is stated in chapter 8 concerning appeals: "If you have not pursued the appeal, which you interposed after two years had elapsed since the sentence, which was pronounced against you, concerning the controversy you had with the Church of Solaria, provided that it can be shown that you omitted the prosecution of the appeal through inability, we do not wish that anything should be done that might generate some prejudice to your justice." Among the impediments that excuse the appellant who has not pursued the appeal within the space of two years, the doctors include his inability, which has been an obstacle to his being able to pursue his appeal. Mühlbauer writes (Thesaurus resolutionum S. C. C., word "appeal," § 35 Impediments to appealing): "First, a legitimate impediment exists on the part of the appellant, namely, due to his own inability, because, for example, due to infirmity, or due to lack of resources, or something similar, he was not able to pursue and conclude the appeal within the prescribed time; cited, chapter -Eco, reason 8, expressed by the words 'through inability,' and the Glossa there, Innocent, Abbot, and the common [opinion]." Now, we learn from the testimony of the bishop of Policastro that it was not negligence, but rather a lack of resources that caused the association to delay in continuing the appeal. Therefore, if the appellant's association is hindered by financial difficulties from proceeding more quickly in pursuing the appeal, it would be contrary to the equity of the sacred canons to reject it for that reason from the interposed appeal. However, the Purgatory association does not need an appeal in order to bring its case before the Sacred Congregation. For, even if the appeal is denied, a restoration to its former state must still be granted to it. Indeed, "restoration to its former state is granted for several reasons... the first of which is minority, and its equivalent... public benefit, privilege."

[*Latin ed. p. 546*]

546 "EX S. C. CONCILII, of pious places, of the commonwealth, and of the treasury" (Pellegrini, *Praxis Vicariorum*, Part II, Section II, Subsect. XI, No. 9). And a little later: "Hospitals and other pious places, such as colleges, congregations, and the like, which are nevertheless pious, also have the benefit of restitution in full" (Ibid. No. 14). Therefore, it is manifest that, unless by appeal, at least by restitution in full, the sodality of Purgatory has recourse to the Holy See, contrary to the opinion of Salerno, since less than four years have elapsed since the promulgation of that opinion. But I may proceed even further with greater assurance: for it is not necessary for our sodality, either by the right of appeal, nor by restitution in full, to open a way to you, so that it may undermine the adverse opinion. For this is evidently not the case: and therefore, for thirty years, it is permissible to act against it, "because a judgment laboring under nullity never becomes a

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settled matter, as the doctors commonly note." (Bouix, *De Iudiciis*, Part 2, Section o, Chapter 2, § 1, No. 3). And in truth, "a judgment will be null... if it contains a manifest error," which the defender has endeavored to demonstrate by restoring all the words of the judgment to their true meaning. By this, the advocate has shown that the foundations of the Salerno judgment have crumbled and weakened. But how do we think the Salerno judge would have judged, if, with regard to the law, he had observed that not all lay sodalities are subject to the parish priest; but that those which have their seat in a chapel, and are neither connected nor annexed to the parish church, are exempt from the power of the parish priest; and that lay sodalities cannot be compelled to participate in supplications, unless there is a custom, and that this custom is of such a nature that it has been accepted and observed with the intention of being bound? How do we think the Salerno judge would have judged, if, with regard to the facts, he had considered that in the convention of 1652, care had been taken not only for the chapel, but also for the freedom of the sodality; if he knew that the sodality of Purgatory has always been exempt from the jurisdiction of both clergy?

[*Latin ed. p. 547*]

POLYCASTREN. 547 souls, and their pastors, catechists, confessors, and deacons, did not receive their appointments from the clergy of Saint Nicholas, but freely chose them from either clergy; if he knew that the chapel of Purgatory was not located within the territory of the parish of Saint Nicholas, but rather within the territory of the parish of Saint Mary of the Podium; if he had not been informed by decrees issued by the Most Holy Congregation on November 23, 1748, and on August 3, 1833, in which the church of Saint Nicholas is declared to be subject to the parish of Saint Mary, and in which it is permitted to celebrate two Masses on the feast of the Most Holy Body of Our Lord; if, above all, he did not know that the sodality from Purgatory, after the year 1833, never offered itself for the celebration of the Mass of the Body of Christ, except after the year 1877, when it was established that, alternately and from year to year, one clergy or the other would offer the Mass; and if it had never been reported to him by the clergy of Saint Nicholas that the sodality wished to participate in the Mass? For it is upon this very point that the clergy of Saint Nicholas relies, in order to ensure that our members are perpetually obligated to attend the feast of the Most Holy Body of Christ, a feast which the clergy themselves conduct, as they have done for three centuries. — But the clergy does not consider that we are acting within our rights: they do not remember that, at no time, can a prescription be established through the exercise of a right. There is only one exception; if it can be demonstrated that someone, for a long period of time, has maintained a certain custom with the intention of obligating themselves, and thereby diminishing their

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original freedom: or if, when someone is notified to do something to which they are not obligated, they willingly comply, and for a long time, without any objection, submit to it; or if, by any other means, they have manifested their intention to obligate themselves towards another, and willingly grant and permit that other to exercise their right. Hence, it is clear that the decisions which the opposing clergy puts forward have nothing in common with the case in which we find ourselves: these decisions pertain to entirely different cases, as is evident from their very titles (”Fanen. praecedentiae,” ”Romana praecedentiae,” ”Colonien”).

[*Latin ed. p. 548*]

From the decrees of the Council of Trent, specifically session 5, from the decrees of Piacenza, from the regulations concerning the celebration of Mass in Majorica, from the statutes of the cathedral of Caesaraugusta, and from the laws concerning burial in Capua, from the regulations of Cologne, from the laws of Calagurris concerning visitation. For if someone sees his rightful place being occupied by another, he should not object, but rather endure this patiently for a long time; if someone readily admits a priest, to whom he was not subject, to visit his church for a prolonged period; does he not thereby clearly reveal his intention, to relinquish his right, and to submit himself to the authority of another? The same can be said of the example cited by Scarfantonio, namely, of magistrates who, through long-standing custom, have assisted at sacred rites in the cathedral. Civil magistrates are not chosen for the purpose of participating in sacred rites, but to attend to the temporal affairs of the civil community. If they wish to participate in the rites of the Church, they can do so as faithful, and it is not necessary for them to do so as public officials; but if they act as magistrates, and do so for a long time and without interruption, they thereby demonstrate a certain intention, to obligate themselves to do so. But our case is entirely different. We are dealing with a pious confraternity; and pious confraternities are established for the purpose of engaging in pious works, and in the sacred rites of the Church, and especially in prayers. And among the solemn prayers, the most important is that which is held annually in honor of the Most Holy Body of the Lord. What is so surprising if the confraters take part in it? What is so extraordinary about this, that by doing so, they are said to be relinquishing their rights, diminishing their freedom, and incurring an obligation towards the church from which the procession originates? Therefore, in order that these consequences may not arise, it is necessary that the confraternity, contrary to its nature and its founding, should abstain entirely from public prayers, or at least diligently ensure that the pious custom of their participation is broken at the established times, so that while they are engaged in promoting divine worship, they do not lose their freedom and submit themselves to the authority of another;

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which, as everyone can see, is contrary to reason.

[*Latin ed. p. 549*]

POLYCA.STREN. 549 Therefore, we are in a case where no evidence can be presented to show that the mind was obligated; and unless this is clearly proven, the custom of many years does not create any valid obligation. For if it can be proven that a certain family has always brought its grain to the same mill to be ground, this will not prevent that same family, even after many centuries of custom, from requesting the mill to grind their grain elsewhere. Nor, if some family has cultivated my land for many centuries, does this create any right for me to force them to continue cultivating the land in the future. Thus, even if a sodality has offered its services to the liturgy of a certain church for six hundred years, no right arises for that church from this act, by which the sodality can demand that it continue to perform the same service perpetually. Indeed, we are dealing with a matter in which lay sodalities act freely. They are not bound by the Tridentine law, which commands that they participate in prayers, as H. S. O. judged in Cagliari in October 1588, lib. 5, decretum, page 204 (cited by Pallottini, voce sodalitium, no. 69); nor can they be obligated in this matter by decrees of bishops or provincial synods; and if they have maintained the custom of participating in sacred ceremonies, such a custom is always presumed to have been freely begun and freely continued, and of such a nature that it never creates an obligation, as H. S. C. wisely declared when asked by the Archbishop of Urbino the following question: "Assuming an obligation has been imposed by a provincial synod that lay confraternities must participate in processions when called by the ordinary, and assuming there is a custom of participating in all processions; can these confraternities be compelled by the Archbishop through an edict to participate in these processions, lest these synodal decrees and the custom be rendered ineffective, without a significant detriment to the divine cult?" On March 10, 1663, S. C. responded: "No" (Urbinatensis, visitationis sacrorum liminum, dub. 22). But what if that very custom, upon which one so confidently relies...

[*Latin ed. p. 550*]

550 FROM THE DECREE OF THE HOLY GENERAL COUNCIL concerning St. Nicholas, after which, with the permission of the Holy Congregation, separate processions were begun by the two parishes, namely from the year 1833, was it entirely interrupted? Indeed, the best opponent strives to persuade you that the members, up to this very dispute, according to their custom, never ceased to attend the procession of St. Nicholas on the Feast of Corpus Christi. But how weakly does he attempt to prove this! He offers words, by which, in the year 1880, the members agreed to alternate in attending the supplications of both parishes. But how can it be inferred from these words, that they always celebrated the supplication of St. Nicholas up

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to that year? I believe only the opponent understands it this way. For they said in those words that, from the year 1823, they had not attended either supplication. He presents the affirmation of the very clergy of St. Nicholas: as if the custom asserted by the clergy in their favor should be held worthy of belief. He affirms that the members themselves, in the first judgment, declared a constant custom to exist. But if the acts of the first judgment are examined, such a confession is nowhere found. He adduces the opinion of the first judge: who, however, does not affirm that the custom truly always existed, but only says that the confraternity, from the Purgatory, had intended to be subject to neither parish from the beginning; and therefore, if any custom had existed, it should not be presumed that they intended to bind themselves to it: which is evident from the two first considerations of the sentence of Policastro. Finally, he presents a certain document from La Feuillee, to which several citizens of Policastro subscribed, and in which it is affirmed that the members from the Purgatory always attended the procession of the clergy of St. Nicholas, even after the parish of St. Mary began to hold the procession (Summ. adv. num. 19). But who wrote this document? By what authority? Who are these subscribers? How old are they? How much credence do they deserve? How did those who confirmed it with their signatures know what they were confirming? We know nothing of these things. We know only this: that they have not given any oath regarding the truth of what they said. Therefore, you see, Most Reverend Fathers, what is the value of such a document! It is not hidden from you that, in this way, even hundreds can be induced to subscribe.

[*Latin ed. p. 551*]

POLYCASTRO. It is easily understood that any falsehood intended to undermine the truth can be readily gathered from those who are eager to please. But, on the other hand, fifteen witnesses, duly questioned by representatives of the Sodality of Purgatory, solemnly testified, after the year 1833, that the members had no longer attended the procession organized by the clergy of Saint Nicholas on the feast of the Most Holy Body of Our Lord. All of these were examined under oath by the authority of the Polycastrensis court, for the Reverend Anthony Ferrari, the vicarius foraneus of the town of Lagonegro, was delegated to question them. We know that these individuals were of mature age, enjoyed a good reputation, and possessed the qualifications required by law; the oath was administered to them, after the necessary admonitions concerning the sanctity of the oath and the penalties prescribed for perjury. Thus, the oath was taken by all, individually, and after excluding any extraneous considerations, they were examined, not only concerning the fact of the custom, but also concerning their knowledge of the matter; and they presented such consistent testimonies, both in substance and in detail, that it is clearly evident to those who read them that they spoke the truth, and that they had not been

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warned or instructed by anyone to give their testimony in a particular way. Therefore, given the care with which these witnesses were examined, it must be believed. Consequently, not only is it not proven that the members continued to attend the procession of Saint Nicholas after the year 1833, but it is, in fact, proven that they abstained from that procession entirely after that year. I have already stated that lay members are not obligated to attend religious processions, as religious members are bound by the law of Trent. But this is not the present question. The members of the Sodality of Purgatory do not deny that they attend the sacred procession in honor of the Most Holy Body of Our Lord; on the contrary, they desire and earnestly request to do so; they only request that it be permitted to them to do so, while preserving the freedom of their sodality. There are two parish churches in Rivello, which, as you were informed by Emilius Furiettus in Polycastro on the day of September 14, 1748, are equal, with only a few exceptions. The Sodality of Purgatory was founded on the condition that it would not be subject to either church; and it has diligently guarded this freedom at all times, and its rector,

[*Latin ed. p. 552*]

552 From the Sacred Council, prefects, councilors, confessors, and catechists were chosen alternately from either clergy, as we know from the visitation of Bishop Laudisio in the year 1825. Regarding the procession on the Feast of Corpus Christi, until the year 1833, the members had the freedom of choice: since only one procession was held, they participated in that one. But they always acted freely, and therefore they did not bind themselves to anything for the future. However, if we were to suppose, which I do not concede, that they incurred some obligation through this custom, I maintain that they could only have obligated themselves in general to participate in the supplication in honor of the Body of Christ, and not that they obligated themselves to participate rather in the procession led by the clergy of Saint Nicholas, rather than in the supplication led by the clergy of Saint Mary. For how could they have done so, if at that time only one supplication was held on that day? Therefore, even in this hypothesis, the freedom of choice remains with the members between the two supplications. They have used this right of choice with their ancient and perpetual equity, deciding to attend one procession or the other in alternating years. In this way, they believed that they would satisfy their piety, and do no injustice to either clergy, and also promote the freedom of the sodality. But against this freedom of the sodality from Purgatory, which is cautioned against in the document of the year 1652, the adversaries argue that that document was not ratified by ecclesiastical authority. However, this ratification must be entirely presumed after three centuries, unless we wish to undermine and weaken all ancient institutions. Furthermore, the clergy of Saint Nicholas did not realize how dangerous it is for them to

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propose such an exception. For if ecclesiastical authority did not approve of the sodality's constitution from Purgatory, then the sodality would not be an ecclesiastical entity, and would completely lack the subject of that obligation for which the clergy so vigorously contended. However, this freedom of our sodality from both churches has been so wisely and so firmly established from the beginning, and so diligently maintained by those who followed.

[*Latin ed. p. 553*]

POLYCASTREN. I have defended you with all my might, and I greatly hope that, even after this present controversy, you will remain safe. The following points have been brought to my attention and require clarification: Question I. Whether there is a place for appeal in this case. And, if affirmative: Question II. Whether the judgment of the archiepiscopal court of Salerno should be confirmed or overturned in this case. RESOLUTION. After discussion by the Sacred Congregation, on December 1, 1899, it was decided to respond as follows: Regarding the first point, provision will be made in the second. Regarding the second point, the judgment should be overturned. FROM THE SACRED CONGREGATION FOR ECCLESIASTICAL AFFAIRS OUTSIDE THE ROMAN CURIA – REQUESTS from the Fathers of the Plenary Council of Latin America. Most Blessed Father, The Archbishops and Bishops of Latin America, assembled in Plenary Council, attentive to the needs of their dioceses, most urgently request the following: I. That whenever the Profession of Faith must be made before a Bishop, and there is a grave necessity, it may also be validly made before a delegate of the Bishop himself. II. That when it is necessary, due to a lack of priests, after consultation with the Chapter, and where the Chapter is not present, after obtaining the opinion of the diocesan Consultors, the Bishop may summon to the diocesan Synod either all or half of the Parish Priests and Rectors, or those whom he judges to be most fitting to summon in the Lord. III. That in Masses of the Living which are celebrated with singing, in the first and second class, on Sundays and other...

[*Latin ed. p. 554*]

554 FROM THE SUPREME SACRED CONGREGATION FOR THE EXTRAORDINARY ECCLESIASTICAL AFFAIRS: On solemn days, and whenever the Sacrament of the Most Holy Eucharist is publicly exposed for the veneration of the faithful, even if sacred ministers are not present, it is permissible to perform incense offerings. IV. That the "Memoriale Rituum" published by Benedict XIII may be used for rural parishes, it may also be used in non-parochial churches, in which the conditions of small churches are verified. V. That Your Holiness may deign to extend the declaration of the Sacred Congregation for Spain, published on January 31, 1880, to all regions of Latin America, according to the formula proposed in note article

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592 of the decrees of the Plenary Council, that is: Marriages contracted in our regions without public record are invalid, and cannot supply the place of public record, nor can any instrument drawn up in the diocesan court or elsewhere serve as a basis for a dispensation regarding any impediment, from which it may be inferred that a serious promise has been made to contract marriage. VI. That, considering the special circumstances of our regions, even clerics who have only received the tonsure, who have been suspended from all office and benefice for more than three years, after the expiration of the three-year suspension, may, by right, receive the habit and tonsure, unless they obtain special written permission from their own Ordinary. VII. That, in our regions, the following may be safely admitted as special causes for deprivation from office and benefice, after a prior legitimate or threefold warning, namely, those mentioned in article 820 of the decrees of the Plenary Council, that is: 1. Public, persistent, and gravely culpable defamation concerning priestly morals, even after a legitimate warning, which causes serious harm to the care of souls; 2. Rash and, after a legitimate warning, stubbornly repeated admission to marriage of those who are rightly restrained by public impediments; 3. Rash omission of catechetical instruction, at least on Sundays and solemn feast days, for a major part of the year, and persistently continued after a legitimate warning. Also, rash and, after a legitimate warning, repeated negligence in the administration of the sacraments to the faithful who are in articulo mortis, even if admitted solely due to distance from the parish church.

[*Latin ed. p. 555*]

I. From the Sacred Congregation of the Holy Church, Extraordinary Matters, 555, 4. A grave and public injustice and disobedience, after repeated legitimate warnings, in the collection of taxes, especially concerning marriages to be celebrated or funerals, contrary to the diocesan laws regarding taxes; 5. A grave and public negligence, for a significant portion of the year, recklessly prolonged, and persistently continued after a legitimate warning, in the spiritual care and Christian instruction of the Indians and Negroes of the parish, according to the norms prescribed in the diocesan laws.

VIII. Considering the special circumstances of our regions concerning ecclesiastical goods, the Bishops, with the prior consent of the Chapter or diocesan Consultors, shall have the power to:

1. Lease ecclesiastical goods for a period longer than the usual three years, up to nine or twelve years, provided that, according to civil laws, there is no danger that the lease will pass into perpetuity;

2. Freely alienate ecclesiastical goods, where the sum of money does not exceed the value of twenty thousand pounds of the proper currency of the nation, if necessity or evident utility require it, and the price obtained shall be invested in a safe and profitable place, for the benefit of the Church or

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the cause to which the goods belonged.

IX. That, according to article 697 of the decrees of the Plenary Council, in each ecclesiastical province currently existing, faculties of Scholastic Philosophy, Theology, and Canon Law may be established in the Metropolitan Seminary or in another designated by the common vote of the Suffragan Bishops, with the privilege of conferring academic degrees, while meanwhile the statute for the faculties of the Archdiocese of Mexico, approved by the Sacred Congregation of Studies, shall be observed, with the obligation of preparing its own statutes within one year and submitting them for the approval of the same Sacred Congregation of Studies. In those nations in which there are more than one ecclesiastical province, the aforementioned faculties may be established in only one seminary, designated by the common vote of the Bishops.

X. In commemoration of the discovery and conversion of America, in each parish, a Mass may be celebrated for the purpose of giving thanks, with the hymn *Te Deum*, on the Sunday closest to the twelfth of October, the day on which the immortal Columbus discovered America.

XI. That the Office and Mass proper of Saint Thuribius shall be extended to all of Latin America, according to the rite of the second class.

XII. That the Office and Mass proper of the Blessed Virgin Mary of Guadalupe shall be extended to all of Latin America, according to the rite of the first class.

[*Latin ed. p. 556*]

556 FROM THE SACRED CONGREGATION FOR EXTRAORDINARY ECCLESIASTICAL AFFAIRS, DECREE XIII. That His Holiness may deign to extend the Constitution "Romanos Pontifices," promulgated on May 8, 1881, to all of Latin America. From an audience with His Holiness, on January 1, 1900. His Most Holy Lordship, Pope Leo XIII, by divine providence, having heard the petition of the special Congregation of Cardinals of the Holy Roman Church, to whom the recognition of the decrees of the Plenary Council of Latin America had been entrusted, presented by the undersigned Secretary of the Sacred Congregation for Extraordinary Ecclesial Affairs, has deigned to favorably receive the aforementioned petitions of the Fathers of said Plenary Council, as follows: For items I, II, III, IV, VI, VII, and VIII, for a period of ten years; for items V, IX, X, XI, XII, and XIII, perpetually. And thus, His Holiness has commanded that this be recorded, notwithstanding any contrary provisions. Given in Rome, on the aforementioned day, month, and year. FELIX > • CAVAGNIS, Secretary.

FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION: A DOUBT: What is to be said concerning the ordination of a priest, in which the host was absent during the actual delivery of the instruments?

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Most Blessed Father, the Priest N. N., prostrate at Your feet, humbly explains that, having been ordained on December 22, 1894, along with another, by the Bishop N., now deceased, he clearly saw that the host was absent upon the paten during the ordination. Furthermore, he brought to his attention the response given by the Supreme Tribunal of the Sacred Inquisition on January 11, 1899, regarding the absence of wine in the chalice, which was read in the Ephemeris II, Ecclesiastical Monitor, in the month of May, and this has caused him to doubt the validity of his ordination. Therefore, the petitioner humbly asks what is to be done in practice: I. Concerning the ordination;

[*Latin ed. p. 557*]

FROM THE SACRED CONGREGATION 557 II. Concerning Masses celebrated and the coadjutor's benefit derived from the care of souls exercised by him; III. Concerning marriages celebrated before him. And God, etc. On Thursday, January 17, 1900. In the General Congregation, before the Most Eminent and Most Reverend DD. Cardinals, General Inquisitors in matters of faith and morals, having considered the aforementioned requests, the same Most Eminent and Most Reverend Fathers were commanded to respond: That the ordination must be repeated entirely, under the same conditions and with the same secret, on any day and by any Catholic Bishop, provided that the words are spoken with the Most Holy Father, so that it may suffice, for the Masses celebrated by priests, as in this case. On the following Saturday, January 19th of the same month, during the usual audience of His Holiness, Pope Leo XIII of blessed memory, held by the Assessor of the Holy Office, His Holiness approved the resolution of the Most Eminent and Most Reverend Fathers, and graciously granted permission. I. Reverend Father MANCINIS, B. and U. Inquisitor. Notary. A QUESTION arises concerning a priestly ordination, in which the chalice was not touched, and the paten was raised above the chalice itself, while the formula was recited. To the Most Blessed Father, Tizio, a priest, in his priestly ordination, before the Bishop even began the formula prescribed for touching the instruments, having noticed that he was not touching the *ostia*, he attempted to reach it; but having had to make an effort for this, he removed his hand from the chalice during the entire formula, without, however, reaching the *ostia*. Furthermore, due to the aforementioned effort of his hand, he also raised the paten from the chalice, so that he probably also compelled the ordaining Bishop to raise the same paten on his part, so that there would be no single moral connection between the paten and the chalice, being thus totally separated from each other.

[*Latin ed. p. 558*]

558 FROM THE SUPREME SACRED INQUISITION. Having therefore prostrated himself before the Most Holy [Father], he humbly asks how he

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should proceed. Most Excellent. Thursday, January 17, 1900. In the General Congregation of the Most Holy and Universal Inquisition, held by the Eminent and Illustrious Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned petitions had been presented, and with the vote of the Most Reverend Consultors preceding, the same Eminent and Illustrious Fathers ordered that the following response be given: Let it be approved. On the following day, Friday, January 19 of the same month, during the customary audience granted by the Most Holy Lord Pope Leo XIII, of blessed memory, by the Assessor of the Holy Office, the Most Holy Lord approved the resolution of the Eminent and Illustrious Fathers. I. CANON MANCINIS. Notary of the Sacred Congregation. DOUBT: Whether the Holy Sacrifice may be celebrated upon altars consecrated in past centuries, without the relics of the Saints. In the Report on the condition of the Church of Nichteroyen, or St. Petersburg, of the Sacred Congregation of the Council, the following request is found to have been transmitted to the Sacred Congregation of Rites: namely, "Whether it is permissible that the Sacrifice of the Mass be celebrated upon 'stones of altars,' even in parish churches, consecrated in the preceding century, or even in the sixteenth century, without the sacred relics of the Saints, either by missionaries or by older bishops? Some affirm that in those ancient times, missionaries in South America had the privilege of consecrating portable altars or stones for the Sacrifice without the Holy Relics." Thursday, January 17, 1900. In the General Congregation held by the Eminent and Illustrious Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned doubt had been presented, which had been transmitted to this Supreme Congregation for resolution, and with...

[*Latin ed. p. 559*]

From the Sacred Congregation of the Inquisition, 559 Decrees and Regulations. By the vote of the Consultors, the same Most Eminent and Reverend Fathers were commanded to respond: The Bishop should ensure that the Relics of the Saints are placed in the altars according to the prescribed rite; and in the meantime, the use of celebrating [Mass] in those altars can be tolerated. On the following Thursday, the 19th of the same month of January, during the usual audience of His Holiness Pope Leo XIII, given by the Assessor of the Holy Office, His Holiness approved the resolution of the Most Eminent and Reverend Fathers. I. Can. Mancini, Sacred Baron, and U. I. Notary.

Doubt: Can the marriage of a Christian be validated with a convert who, having availed himself of the Pauline privilege, omitted the questioning of the non-Christian woman?

Most Blessed Father, a certain Curate of the Diocese of N., prostrate at the feet of the Holy See, presents the following case: Titius, a Jew, contracted marriage in the state of infidelity with a woman equally non-Christian,

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from whom, having obtained a document of repudiation, he was legally divorced. Having done this, when he cultivated affections for the Catholic Berta, with whom, after she declared before the civil authorities, without confession, that she was willing to do so, he entered into a civil union in the year 1887, which is considered a valid marriage according to civil laws. Tormented by the pangs of conscience due to his defection from the faith, Berta intended to encourage her pseudo-husband to embrace the faith, having been told by the Curate himself that everything could easily be resolved on the occasion. Indeed, in the year 1892, Titius was baptized, and on the same day, the marriage between Titius and Berta, who was also reconciled with the Church, was celebrated before the Church, in the presence of the same Curate, who then, out of sheer negligence, completely overlooked the previous marriage of Titius, contracted in the state of infidelity. Now, in a similar case, in which the questioning of the non-Christian spouse was demanded, the aforementioned Curate, having remembered his error, sought to remedy the defect. In an investigation, he learned that the former Jewish spouse still lived in N., but neither wished to embrace the faith, nor respond to any questioning.

[*Latin ed. p. 560*]

560 From the Sacred Congregation of the Inquisition: To grant [permission], since the marriage is considered legitimately dissolved according to civil law, and since one party, Titus, has entered into a marriage with Berta before a civil magistrate, which is considered valid. Therefore, the aforementioned priest humbly petitioned that, with the permission of the Apostolic See, dispensation be granted from the questioning of the unfaithful spouse in this case, and that the marriage between Titus and Berta, as mentioned above, which was begun before the baptism of the man, be healed in its root. And God, etc. Thursday, January 17, 1900. In the General Congregation of the Holy Roman Church and the Universal Inquisition, held by the Most Eminent and Reverend Lords Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned petitions were presented, and with the vote of the Most Reverend Consultors preceding, the same Most Eminent and Reverend Fathers ordered that the following be answered: Provided that it is established from the process, even a summary one, that the woman did not wish to give any response, the marriage can be contracted, and it is so. – It is understood, in this case, that there is no room for dispensation in the root [of the marriage]; for the previous marriage, contracted in infidelity, still remains in force; which is not dissolved, unless, after conversion and an unsuccessful attempt at questioning, a new and valid marriage contract is entered into. On the following day, Saturday, January 19 of the same month, during the usual audience of His Holiness, Pope Leo XIII, of blessed memory, held by the Assistant of the Holy Office, His Holiness approved the resolution of the Most Eminent and Reverend

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Fathers. I. Can. MANCINI - Secretary of the Holy Roman Church and the Universal Inquisition. DOUBTFUL. Can daughters of heretics be received into Catholic female institutions? Most Blessed Father, N. N., Superior of a female educational institution, prostrate before Your Holiness, humbly explains that some time ago, having received a request to accept two young women from a Protestant family as external students, that is, in a semi-boarding arrangement, she turned to the Ordinary, who permitted her to accept them, on the condition that she later present everything to the Holy Office.

[*Latin ed. p. 561*]

FROM THE SACRED CONGREGATION OF THE INQUISITION 561 Subsequently, having received a request to admit another Protestant young woman into the semi-boarding school, she accepted her equally, as she had the two previous ones. On other occasions, in times past, requests were not lacking to have young, non-Catholic women accepted as boarders. With this in mind, Foratrice humbly asks: 1.° Whether she may continue to keep the three young women, mentioned above, among the students of the semi-boarding school, noting that the relatives of these young women have willingly given ample permission that the same treatment be used with them as with the Catholic students, regarding the instruction of the catechism, attendance at functions, etc. 2.° How to proceed in the future in the event of requests from non-Catholic young women as students, whether as boarders or day students. Etc. Thursday, December 6, 1899. In the General Congregation of the Most Holy and Universal Inquisition, held by the Most Eminent and Reverend Cardinals, General Inquisitors in matters of faith and morals, concerning the aforementioned petition, and after the vote of the Most Reverend Consultors, after mature deliberation, the same Most Eminent and Reverend Fathers ordered that the following be answered: The three students already admitted may be tolerated, provided that there is no danger of any perversion of the Catholic students; with regard to this matter, the Mistresses must be diligent. As for others, for boarders, the answer is negative. For day students, recourse should be made in each individual case, always except for the daughters of apostates. On the following Friday, December 7th of the same year and month, through the faculties granted to the Most Eminent and Reverend Cardinal S. O., Secretary, His Holiness, Pope Leo XIII, of Divine Providence, approved the resolution of the Most Eminent and Reverend Fathers. I. CAN. MANCINIS. Royal and Universal Inquisition. Notary. A DOUBT concerning Masses celebrated with hosts, of which the flour is doubtful. The Bishop N. N. reports to the Holy See: "In this my diocese of N. and in neighboring dioceses, for many years now, a large quantity of non-genuine flours have been sold, which were often used even in the preparation of the hosts for the Holy

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Mass." Acts, Volume XXXII, page CCCLXXXI, 36.

[*Latin ed. p. 562*]

562 FROM THE SACRED CONGREGATION OF THE INQUISITION: "Many priests, both those of good faith and those with doubts concerning the validity of the matter, celebrated the divine Sacrifice with hosts made from such flour. "During the course of the Holy Pastoral Visitation, having verified the gravity of the matter, I sought to apply energetic remedies with measures suitable to the individual places, and with severe sanctions; measures and sanctions which were later confirmed and extended throughout the entire diocese with a similar circular. "These disciplinary measures disturbed the consciences of several priests concerning past actions, who asked me how to proceed regarding Masses celebrated with such matter, and sometimes with doubt concerning its validity. "Therefore, I beseech Your Eminence, Most Reverend, to obtain from the Holy Apostolic See a benign absolution for my priests (even for Masses celebrated outside the diocese), and, subject to obtaining this, to allow them to discharge any burden of conscience by celebrating a small number of Masses, the proportion of which would be most leniently determined by the Ordinary in individual cases." And the Most Holy Supreme Congregation of the Holy Office, having maturely considered this question, on the fourth day of the month of January, 1897, after hearing the opinion of the Most Reverend Consultors, responded: "Let petition be made to the Most Holy [Father] that He provide from the treasury of the Church, as may be necessary, taking into account the Masses to be celebrated by those who celebrated [Masses] with good faith and by those who celebrated [Masses] with doubt." On the following sixth day, the 29th of the same month, after a report was made to the Most Holy Pope Leo XIII, the Most Holy [Father] confirmed the resolution of the Most Eminent Fathers, and benignly granted the requested grace. DOUBT: Whether one who, due to illness, eats meat, may mix fish and meat on a day of fasting. To the Most Eminent Prince, Tizio, who is ill, needs not only to eat several times on a day of fasting, but also meat; could he also eat fish at the same time? I believe that he could. The Holy Office (January 27, 1875) obliges, "not to mix meals," even those who eat meat due to an indulgence, not only those who are fasting; it recalls the decree of March 24, 1841.

[*Latin ed. p. 563*]

FROM THE SACRED INQUISITION, 563: "Even those excused from a single meal due to infirmity or labor, who eat meat by dispensation, are obligated not to mix meats." It does not speak of those who eat meat due to illness, and therefore it suggests, or leaves to be believed, that those who eat meat not by dispensation are not obligated not to mix meats. This is the opinion expressed by Ballerini Palmieri, *Opera Moralia*, Volume II,

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Treatise III, number 26 (2nd edition, page 797); by Génicot (Professor of Louvain), Volume I, number 444 (2nd edition); by D'Annibale, Volume III, number 138 (3rd edition); and by Bucceroni, *Institutiones*, Volume I, number 1607. Prostrate before the kiss of the Holy Purple, I, a humble son, profess this on the 18th of December, 1898. The Sacred Penitentiary, having considered the aforementioned, responded: The petitioner may, according to his conscience, follow the opinion of the authors cited. Given in Rome, in the Sacred Penitentiary, on the 9th of January, 1899. FROM THE SACRED CONGREGATION FOR RITES: Concerning the canonization of the Blessed Rita, a nun from Cassia, of the Order of the Hermits of Saint Augustine. REGARDING THE DOUBT: Concerning what miracles are established in the case and for the effect of which they are considered. In times of great virtue and when the storms of great wickedness were present in the midst of human society and within the very bosom of the Church, the Providence of God seemed to intervene with impending evils, raising up men and women of extraordinary sanctity, whose works restored piety and whose actions, as the avenging hand of God, restrained the scourge. Indeed, this was the condition of public affairs, especially in Italia, when, with peoples miserably divided and minds given over to vice, God offered a strong woman, who, with the brilliance of her virtues, drew even the unwilling to her.

[*Latin ed. p. 564*]

564. From the sacred rites, one might draw astonishment. This was Blessed Rita of Cascia, in Umbria; to whom the words of Saint John Chrysostom can rightly be applied: "Truly, you marvel at how a rose has blossomed amidst thorns." She was born in the small fortress of Porena, near the town of Cascia, in the year 1381. While living in her father's house, she shone forth with piety, modesty, obedience, austerity, and charity towards the poor, and especially with constant contemplation and a love of solitude. Since she burned with this desire, and yet obedience did not allow her to be granted permission to go to a solitary place, she established a domestic retreat for herself, converting a room in the house into a chapel, where she delighted for a long time, like a dove sighing in the openings of a rock and in the cave of masonry. In this dwelling, diligently intent on recalling the patience of Christ, and on mortifying the flesh with fasts and penances, she could not help but think of embracing the discipline of religious life in some institute of nuns. However, obedience, which she considered to be a sacrifice pleasing to God, compelled her, albeit unwillingly, to consent to marriage. She proved herself to be a strong woman in all things, but especially in enduring the long-lasting vexations of a quarrelsome husband. It is astonishing how, when her son attempted to kill her husband, she begged that he be spared, preferring to lose her own life than to see her son deviate from divine law. After this event, and

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completely freed from the bonds of blood, she sought admission among the nuns of the Order of Saint Augustine, whose illustrious and ancient Order rightly glories in so many distinguished saints and scholars. Although she was initially rejected three times, she was finally admitted into their house in Cascia, by a miraculous means and with divine guidance. There, her virtue and the fame of her miracles became increasingly known, and after enduring a long illness with patience and having earned many merits, she died a blessed death in Cascia, on the eleventh day before the Kalends of June, having lived for more than seventy-six years. A very large crowd gathered for her funeral, with raised hands and veneration. Other people, undertaking pilgrimages, never ceased to visit her tomb and to honor her with the worship that is due to the saints, until, at the urging of many, she was declared blessed by Pope Clement XII. Finally, Pope Leo XIII, heeding the fervent prayers of the entire Augustinian Family, granted her the highest honors, especially since three things were said about her.

[*Latin ed. p. 565*]

FROM THE SACRED CONGREGATION OF RITES, 565: "Through her intercession, miracles having been obtained, an accurate investigation into these matters was ordered, and the entire matter was to be carefully considered. Regarding these miracles, a formal inquiry was initiated; first, in the preparatory meeting, held on the fifth day before the Kalends of Quintilis [May 1st], of the year 1839, convened by the Most Reverend Cardinal Caietan Aloisi-Masella, Relator of the Cause; then, after the matter was raised, on the fifteenth day before the Kalends of January [December 16th] of the following year; finally, in the general assembly before His Holiness Pope Leo XIII in the Vatican buildings, on the sixth day before the Kalends of this month [March 1st], during which the aforementioned Most Reverend Cardinal proposed the question: "Whether, and concerning which miracles, it can be established, in this case and with regard to the effect in question." The Most Reverend Cardinals entrusted with the safeguarding of the Sacred Rites and the Consultor Fathers expressed their opinions. His Holiness, after accepting all the votes, although he called the Cause "most excellent and most noble," nevertheless, according to custom, postponed his judgment regarding the aforementioned miracles, while meanwhile pouring forth and repeatedly offering prayers to implore heavenly assistance. But on this day, which coincides with the feast on which the Hebrew children met Christ with palm branches, and the Eucharistic Host was elevated, He commands the Most Reverend Cardinal Caietan Aloisi-Masella, Pro-Magister of the Benefits, the Pro-Prefect of the Congregation of Sacred Rites, and the Reverend Father John Baptist Lugari, Promoter of the Sacred Faith, and also myself, the undersigned Secretary, to be present, and solemnly declared: "It is established that there are three miracles: namely: the first, the fragrance which emanates from the relics of the Blessed Rita,

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especially when miracles are obtained through her invocation, and which is diffused in a wondrous manner; the second, the instantaneous and perfect healing of the girl Elizabeth Bergamini from a purulent inflammation of the conjunctiva, followed by pannus and ozen; the third, the instantaneous and perfect healing of Cosmas Pellegrini from chronic catarrhal gastro-enteritis, from a hemorrhoidal affliction, and also from a chronic and severe anemia. This decree is to be made public and recorded in the acts of the Sacred Congregation of Rites, on the fifteenth day before the Kalends of April [March 16th] of the year 1900.

CARD. ALOISI-MASELLA

Pro-Dat. S. R. C.
Pro-Prefect.
L. ffi

S. DIOMEDES PANICI

5. R. C.
Secretarius.

[*Latin ed. p. 566*]

566 FROM THE RITE OF SPOLETO, OR NORCIA. Concerning the canonization of Blessed Rita of Cassia, a nun professed from Cassia, of the Order of the Eremites of Saint Augustine. ON A DOUBT: Whether, with the approval of three miracles, it is permissible to proceed to the solemn canonization of the same Blessed. Concerning Christian piety, the Apostle Paul affirmed that it is useful for all things; this is clearly demonstrated by the examples of Blessed women, who have lived with the highest praise in the threefold state of virgins, widows, and nuns. Blessed Rita of Cassia is rightly deserving of these highest heavenly honors, whom Divine Providence seems to have reserved for the present year to be raised to the highest heavenly honors, so that the Most Holy Pope might draw blessings for himself and for the Church from the new glory of Umbria, in that region where she lived for so many years. When Blessed Rita, having adorned her childhood and early adolescence with every kind of virtue, scarcely having reached the age of eighteen, was married against her will, and in that state, she patiently endured the harsh disposition of her husband for a long time, meriting the highest praise of a virtuous woman: "She does good and not evil all the days of her life" (Proverbs 31:12). She lived as a widow, as the Apostle commands, so that she was worthy of all honor. Finally, having distributed her inheritance among the poor, she returned to her family and entered the community of nuns of Saint Augustine in the very city of Cassia, and there she lived most saintly for more than

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forty years. After her death, she received that honor which is usually given to women of outstanding sanctity. When the cause for her canonization was brought forward, and those miracles were duly proven, Clement XII conferred upon her the honors of the Blessed. Soon, the cause was raised again, and an investigation was instituted concerning three miracles, and the Most Holy Pope Leo XIII decreed that they were sufficient. One must inquire, according to the statutes of this sacred court, whether the honors of the Saints can be safely conferred upon Blessed Rita of Cassia. Therefore, at the general meetings of this Sacred Congregation, before the Most Holy Lord, held on the sixth day before the kalends of this month, the Reverend Cardinal Caietan Aloisi-Masella, Relator of the Cause, proposed the following doubt: "Whether, with the approval of three miracles, it is permissible to proceed to the solemn..."

[*Latin ed. p. 567*]

FROM THE SACRED CONGREGATION OF RITES, 567, concerning "The Canonization of the Blessed." Although the Most Reverend Cardinals and Consultors, with unanimous agreement, had responded that it could be safely done, nevertheless, the Most Blessed Father did not wish to reveal his mind, and postponed the matter to another day, so that there might be time for prolonged prayers to implore divine assistance. On this very day, when they went out to meet Christ with palms, and the Sacred Host was offered with fervent devotion, the Most Reverend Cardinal Cajetan Aloisi-Masella, Prefect of the Sacred Congregation, and the Reverend Father John Baptist Lugari, Promoter of the Faith, and I, the undersigned Secretary, were present, and he duly declared: "It can be safely proceeded with to the solemn canonization of the Blessed from Cassia." He ordered that this present decree be made public, that it be recorded in the acts of the Sacred Congregation, and that Apostolic Letters be issued under seal for the solemn celebration of the canonization in the Patriarchal Basilica of the Vatican, when it shall first be possible, on the sixth of April in the year 1900.

CARD. ALOISI-MASELLA, Prefect.

L. S.

S. DIOMEDES PANICI, Secretary.

CONCERNING THE BEATIFICATION, OR DECLARATION OF MARTYRDOM, of the venerable Servants of God: John Gabriel Taurin Dufresse, Bishop of Tabraca; Peter Dumoulin Borie, elected Bishop, and his companions from foreign missions; Ignatius Delgado, Bishop of Mellipotamen; Dominic Henares, Bishop of Fesseitensis, and his companions of the Order of Preachers; Francis Clet, of the Congregation of Missions, and John, of the Order of Friars Minor of Saint Francis, who were killed by idolaters in hatred of the faith.

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ON THE QUESTION OF WHETHER, given the decree of declaration of martyrdom and the cause thereof, and the signs or miracles that illustrate the martyrdom itself, it can be safely proceeded with to the beatification of these same Venerable Servants of God.

Soldiers of Christ, unconquered, who have testified to the immortal truth of the Faith with their blood, have brought forth great trophies for the Church.

[*Latin ed. p. 568*]

568 FROM the sacred rites by which this blessed mother has daily increased the number of these valiant men, repeating the words of the Apostle: "For whatsoever is born of God overcometh the world. And this is the victory which overcameth the world: Our faith" (1 John 5:4). While she gathers the palms of her children with one hand, and counts them, with the other she writes their names in the heavens. To this blessed company, worthy to be numbered among them, is added the most valiant of warriors, namely, John Gabriel Taurin Dufresse, Peter Dumoulin Borie, Ignatius Delgado, Dominic Henares, Francis Clet, John of Triora, and many others, numbering seventy-seven, who in this very century, throughout the Empire of China, Tonkin, and Cochinchina, have maintained the profession of the Christian Faith, which has been stirred up and persecuted by the most terrible of tyrants, with such zeal and constancy that they have plainly equaled the deeds of the ancient martyrs. For they have scorned every kind of threat, preferring exile, imprisonment, torments, and even the most bitter death, rather than to depart from the most holy religion. Concerning their martyrdom, and its cause, and also concerning the miracles or signs, it is established, except for two from that number, who lacked those signs, although the Most Holy Pope declared that they are to be considered and held in the same regard as the other martyrs, by decrees issued on the sixth day before the Kalends of July of the past year, and on the fifth day before the Kalends of March that followed. To complete the legitimate series of events, in the General Assemblies of the Sacred Congregation of Rites, held on the sixth day before the Kalends of this month of April, in the halls of the Vatican, before His Holiness our Lord Pope Leo XIII, a question was proposed by the Most Reverend Cardinal Caietano Aloisi-Masella, Relator of the Cause, concerning the granting of the honors of blessedness to these same Venerable Servants of God. Both the Most Reverend Cardinals and the Consultor Fathers gave their affirmative vote. The Most Blessed Father, however, wishing to seek the protection of divine wisdom more earnestly, considered it prudent to postpone his judgment. But on this very day, Sunday, near the solemnity of the Resurrection of Christ, after a most sacred ceremony, he ordered the Most Reverend Cardinal Caietano Aloisi-Masella, Relator of the Cause, to be summoned, along with the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, and myself, the

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undersigned Secretary, and, in their presence, solemnly decreed: That the beatification of these same Venerable Servants of God may proceed. This decree was made public and entered into the records of the Sacred Congregation of Rites, and Apostolic Letters will be issued in the form of a Brief.

[*Latin ed. p. 569*]

FROM THE SACRED RITUAL, 369: The Beatification, which must always be celebrated, was ordered to be carried out on the sixth of the Ides of April, in the year 1900, by CARDINAL ALOISI-MASELLA, Pro-Datary of the Sacred Roman Congregation, Pro-Prefect. © S. DIOMEDES PANICI, S.R.C., Secretary. OF THE ORIENTAL INDIANS. Concerning the Beatification, or declaration of martyrdom, of the Venerable Servants of God, Father Dionysius of the Nativity and Brother Redemptus of the Cross, of the Order of Discalced Carmelites. ON A DOUBT. Whether, with the decree of declaration of martyrdom and its cause, and with the Signs or Miracles that illustrate the very martyrdom, it is possible to proceed safely to the solemn Beatification of the aforementioned Venerable Servants of God. While a certain and plainly worldly philosophy attempts to restore that ancient kingdom of Satan, by which it is easily apparent that all are concerned with deceit and corruption, and each boasts of his zeal, his spirit, and his willing mind for the common good, when in reality they are mostly concerned with their own fortune and advantages; a striking spectacle is presented in the Catholic Church of men of all conditions, who, urged by the charity of Christ, have not hesitated to dedicate themselves to the advancement of His kingdom on earth, enduring a life of hardship and suffering for a long time, and even to the very end, consummating their sacrifice with the shedding of their blood. Such an example, among almost countless others, shines forth through the two lights of Carmel, the Venerable Fathers, Father Dionysius of the Nativity and Brother Redemptus of the Cross, who, in the year 1638, were sought out by the king of the city of Acheh on the island of Sumatra, and, in hatred of the Christian Faith, were subjected to chains, torments, and every kind of cruelty, and completed their glorious life by being pierced with swords. Concerning whose martyrdom and its cause, and concerning the Signs or Miracles that illustrate the very martyrdom, it has been rightly declared by the Most Holy Lord Pope Leo XIII, by a decree issued on the eighth of the kalends of this month. The doubt to be discussed is: "Whether, with the approval of the martyrdom and its cause, the Signs or Miracles that illustrate the martyrdom..."

[*Latin ed. p. 570*]

570 FROM the very rites themselves, it is clear that it is possible to proceed to the solemn Beatification of these Venerable Servants of God. This question was proposed by the Most Reverend Cardinal Caietano Aloisi-Masella, in place of and in the stead of Cardinal Lucidi Maria Parocchi, Re-

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lator of the Cause, during a General Assembly of the Sacred Congregation for Rites, before His Most Holy Lordship, Pope Leo XIII, on the twenty-seventh day of the month of March, which has now passed. The Most Reverend Cardinals and Consultors presented their individual opinions, and after having attentively heard everything, and after having considered the truth of the martyrdom, the cause of the martyrdom, and the signs, the Most Holy Father postponed the final judgment to another day. But on this Sunday of Palms, after the Sacred Rite had been performed, and while approaching this noble hall of the Vatican and seated upon the Papal throne, He summoned to Him the aforementioned Most Reverend Cardinals, Caietano Aloisi-Masella, Pro-Prefect of the Sacred Congregation for Rites, and Lucidi Maria Parocchi, Bishop of Porto and Santa Rufina, Promoter of the Cause, together with the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, and myself, from the Secretariat, and those present, and, by a solemn decree, He declared: That it is possible to proceed to the solemn Beatification of the Venerable Servants of God, Father Dionysius of the Nativity and Father Redemptus of the Cross. Furthermore, He ordered that this present Decree be made public, that it be recorded in the Acts of the Sacred Congregation for Rites, and that Apostolic Letters, in the form of a Brief concerning the Beatification, be issued whenever it is to be celebrated, on the sixth day before the Ides of April, in the year 1900. CARD. ALOISI-MASELLA, Pro-Dat. S. B. C. Pro-Prefect. L. * S. DIOMEDES PANICI, S. R. C. Secretary. Aosta. Concerning the Beatification and Canonization of the Venerable Servant of God, Sister Mary Crescentia Höss, a professed nun of the third order of Saint Francis, in the monastery of Kauffburano. CONCERNING THE QUESTION: Whether, with the approval of two miracles, it is possible to proceed to the solemn Beatification of this same Venerable Servant of God. At this time, God stirred up the mind of the Supreme Pastor of the Church, concerning the return of those who dissent to the one fold of Peter.

[*Latin ed. p. 571*]

From the Sacred Rituals, 571, it appears that Divine Providence has willed that the honors of the Blessed be sought for the Virgin, who, with constancy of faith, with the power of charity, with long prayers and tears, implored the Lutheran error and the schism from her people to cease. Therefore, a new source of hope and confidence will be added to the pontifical vows and to all good things through the increased devotion to the Venerable Sister Mary Crescentia Höss, and she will be a most auspicious example for the honors bestowed upon women who "have attained glory in the conversation of the nations" (Ecclesiasticus, L, 5). Born in Kauffbura, in Swabia, from most pious parents who sought their livelihood through manual labor, she spent her childhood and adolescence in that place, surrounded by virtues, so that even those who defended

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the Catholic truth were filled with admiration. Moved by the love of the Divine, she considered all human things to be fleeting, perishable, and vain, and, inflamed with a desire for a more perfect life, she decided to enter the community of nuns of the Third Order of St. Francis, in the Kauffbura monastery, and there took the name. In that home, she endured for a long time the most severe trials with invincible patience. After having faithfully performed various duties, especially in the instruction of young girls, she was unanimously chosen by the Sisters to be their superior. The fame of her sanctity and the wonderful gifts bestowed upon her by God increased so much that, as if she were an oracle, people of all sexes and conditions, even those of royal dignity, sought her out from distant regions. This bright light, shining in a dark place, was extinguished by the breath of divine love during the vigil of the Resurrection of the Lord, on the 5th of April, in the year 1744. In order to illustrate this sanctity, two miracles were presented; after they were duly investigated and proven, the Most Holy Pope Leo XIII decreed, shortly after the 5th of March, that they both were to be considered valid. One matter must be inquired into, according to the institutions of this Sacred Court: Whether the honors of the Blessed can be conferred upon the Venerable Servant of God, Mary Crescentia Höss. Therefore, in the General Assemblies of this Sacred Congregation, before the Most Holy Pope, on the 6th of the month of March, the Most Reverend Cardinal Caietan Aloisi-Masella, in place of and on behalf of the Most Reverend Cardinal Miecislaus Ledóchowski, the Relator of the Cause, proposed the following question: "Whether, with the approval of two miracles, the process can proceed to the solemn beatification of this Venerable Servant of God." Although the Most Reverend Cardinals and Fathers Consultors were...

[*Latin ed. p. 572*]

372 Having responded that it could be carried out with sufficient support, nevertheless, the Most Blessed Father hesitated to reveal his intentions, considering that in a matter so important, time should be allowed for prolonged prayer. On this sacred day, commemorating Christ's entrance into Jerusalem amidst the waving of olive branches, the Holy Sacrifice being most devoutly celebrated, the Reverend Cardinal Caietan Aloisi-Masella, Prefect of the Sacred Congregation, and Cardinal Miecislaus Lodóchowski, Relator of the Cause, as well as the Reverend Father John Baptist Lugari, Promoter of the Faith for the Holy Office, and myself, from the Secretariat, were summoned in his presence, and he solemnly declared: "I have decided to proceed with the solemn notification concerning the Venerable Servant of God, Maria Crescentia Höss." He ordered that this decree be made public and recorded in the acts of the Sacred Congregation, and that an Apostolic Letter, in the form of a Brief, be issued concerning the solemn rite of Beatification to be celebrated at any time in the Patriarchal Basilica

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of the Vatican, on the sixth day before the Ides of April, in the year 1900.

CARD. ALOISI-MASELLA

Prefect of the Sacred Congregation.

L. © S. DIOMEDES PANICI,

Secretarius of the Sacred Congregation.

NEAPLES.

Concerning the Beatification and Canonization of the Venerable Servant of God, Sister Maria Juliana of the Most Holy Sacrament, of the Third Order of Servites of the Most Blessed Virgin, Mother of Seven Sorrows, Abbess of the Monastery of the Mantillas of Saint Augustine.

In the presence of the Most Reverend Raphael Maria Virili, the Ordinary and Postulator of the Cause for the Beatification and Canonization of the Venerable Servant of God, Sister Maria Juliana of the Most Holy Sacrament, and of His Eminence and Reverend Lord Cardinal Lucidus Maria Parocchi, Bishop of Porto and Santa Rufina, in the place and instead of the Most Reverend and Eminent Cardinal Camillus Mazzella, Prefect of the Sacred Congregation for the Rites and Relator of this Cause, in the Ordinary and Royal Sessions of the Sacred Congregation, convened at the Vatican according to the Apostolic regulations of the years 1878 and 1895, the following question was proposed for discussion: "Whether the opinion of the Judge, given by the Most Eminent and Reverend Cardinal Archbishop of Naples..."

[*Latin ed. p. 573*]

FROM THE SACRED CONGREGATION OF RITUAL, question 575: "Concerning the delegation regarding the cult of the aforementioned Venerable Servant of God, whether the decrees of His Holiness Pope Urban VIII are to be confirmed in the case and with the effect of which we are speaking?" And the Sacred Congregation, having carefully considered the aforementioned question, and having heard the opinion of the Reverend Father Doctor John Baptist Lugari, Promoter of the Holy Office, judged that the following answer should be given: "Affirmative, that is, to confirm the judgment of the Neapolitan Tribunal." Dated February 6, 1900. Having related all of this to His Most Holy Lord Leo XIII, Pope, His Holiness approved and confirmed the rescript of the Sacred Congregation of Rituals, on the twelfth day of the same month and year.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rituals.

L. S. DIOMEDES PANICI, Secretary of the Sacred Congregation of Rituals.

PICTAVIEN. Concerning the beatification and canonization of the Venerable Servant of God, Andrew Hubert Fournet, priest, founder of the Con-

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gregation of the Daughters of the Cross, commonly known as the Sisters of St. Andrew.

To the most humble prayers of the Reverend Father Raphael Mary, the Vigorous Prelate of Urban, and of the Pictavien Cause for the beatification and canonization of the Venerable Servant of God, Andrew Hubert Fournet, duly appointed Postulator, in the Ordinary General Assembly of the Congregation of Sacred Rituals, convened on the date indicated at the Vatican, before the Most Eminent and Reverend Cardinal Vincent Vannutelli, Relator of the same Cause, and in accordance with the Apostolic regulations of the years 1878 and 1895, the following question for discussion was proposed: "Whether the processes, both those conducted under Apostolic and Ordinary authority, are valid and relevant; whether the witnesses were duly and properly examined, and whether the testimonies produced were legitimately obtained, in the case and with the effect of which we are speaking?" And the Sacred Congregation, having considered all matters, and having heard the opinion of the Reverend Father Doctor John Baptist Lugari, Promoter of the Holy Office, judged that the following answer should be given to the aforementioned question: "Affirmative, that is, they are valid; except for extrajudicial testimonies." Dated February 6, 1900.

[*Latin ed. p. 574*]

574 FROM THE SACRED CONGREGATION OF RITES. Matters concerning these were subsequently reported to His Most Holy Lord, Pope Leo XIII, by the undersigned Cardinal, Prefect of the Sacred Congregation of Rites; and His Holiness, having approved the judgment of that same Congregation, ratified and confirmed it, on the twelfth day of the same month and year. C. CARD. MAZZELLA, Prefect of the S. R. C. L. * S. DIOMEDES PANICI, & R. C. Secretary. CONCERNING THE ORIENTAL INDIANS. Concerning the beatification, or declaration of martyrdom, of the Venerable Servants of God, Father Dionysius of the Nativity and Brother Redemptus of the Cross, of the Discalced Order of Carmelites. REGARDING A DOUBT: Whether it is established that there was martyrdom, and the cause of the martyrdom, and also concerning the signs or miracles in the case and to the effect of which we are speaking. In this life, which is a warfare on earth, certain men, having abandoned the common order and its signs, can be a testament to singular fortitude and constancy; namely, those men who, having served with triple zeal for the State, for the Church, and for Christ, have shone with untarnished honor, and have achieved most noble triumphs over various kinds of enemies. The number of such soldiers is wonderfully increased by the Venerable Servants of God, Father Dionysius of the Nativity and Brother Redemptus of the Cross, both of the Discalced Order of Carmelites, a most worthy example. Dionysius of the Nativity, born in the maritime city of Honfleur, in the Diocese of Bayeux, in the Province of Normandy, in the year 1600, was a young man highly

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commended for his Christian faith, piety, and excellent studies. He first earned his living, and, being very skilled in nautical matters, he quickly attained high ranks in the service, reaching the position of Navigator and Cosmographer in the Oriental Indies. After the French ships were unfortunately destroyed by fire, he joined Dutch merchants, until, having joined a heretical society, he abandoned his office. Then, having left those regions, he went to Cochin, where

[*Latin ed. p. 575*]

From the Sacred Congregation of Rites, 575, it is also fitting to recount the life of the Admiral. After arduous voyages, and having bravely and virtuously accomplished many things, he began to more frequently consider what he had long intended: to dedicate himself to the service of God and to offer the sacred military order in some Religious Order. This desire, finally fulfilled, led him to be received into the illustrious Order of Discalced Carmelites. But scarcely had he begun his novitiate, when, in order to set an example for his superiors, he bravely fought under the banner of the Cross against heretics and the Dutch. After completing his period of probation, and having duly professed his solemn vows, he was ordered to accompany the Portuguese envoy to the King of Achem, on the island of Sumatra, and was appointed as his companion. Father Redemptus a Cruce, a Portuguese man of gentle disposition and outstanding piety, was also appointed, a man who had previously served as a soldier in the East Indies. Upon the arrival of the embassy, the King of Achem prepared ambushes; a rabid band of Turks seized the envoy, along with his entire retinue and the Venerable Brothers Carmelites, and dragged them into prison. There, they were vainly tempted with flattery and enticements to renounce the Christian faith, and were subjected to such torments and insults that death itself would have been far more desirable. First, the Venerable Redemptus bravely fell, pierced by arrows and, at the last, dispatched by blows from swords. Dionysius, a noble leader of that company, was the last to fall, having deliberately sought out this fate in order to, by his appearance and his words, stir up his companions to greater endurance in their suffering. When, however, those about to attack him were suddenly struck down, a certain man among those present, who had defected from the Christian faith, struck the head of the martyr with a terrible blow of the sword, cleaving it to the ears; whereupon the executioners, with repeated blows, dispatched the prostrate man. As the end of this valiant struggle was marked by miracles, the cause of the martyrdom of both men was brought to the attention of the Sacred Congregation. After due investigation, with all proper authority, whether ordinary or apostolic, and after all the evidence had been properly examined and found to be valid, the matter was brought before a special assembly of the Congregation of Sacred Rites at the Vatican, on the sixth day before the Kalends of May in the year 1898, and

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the judgment was confirmed by His Holiness, Pope Leo XIII, on the seventh day before the Ides of the same month. The cause was then reopened, and, with the permission of the same Most Holy Prince, was entrusted to a special group of Fathers of the Order, together with the Prelates of the Congregation of Sacred Rites, for examination and judgment.

[*Latin ed. p. 576*]

576 FROM THE SACRED CONGREGATION OF RITES: On this occasion, a meeting was held on the eve of the Ides of March, during which the Most Reverend Cardinal Lucido M. Parocchi, Relator of the Cause, presented the following question: "Whether it is established that there is martyrdom and the cause of martyrdom, as well as signs and miracles in the case and to the effect of which we are speaking." All those present judged, with broad consensus, that it was established. However, Our Holy Lord, having heard from the undersigned Secretary a report on all matters, decided to postpone the matter, in order to obtain more earnestly the heavenly aid in this grave undertaking through more fervent prayers. On this most auspicious day, which coincides with the solemn anniversary of the Virgin Mary, Mother of God, having zealously performed sacred duties in the domestic chapel, the Most Reverend Cardinals Camillo Mazzella, Bishop of Praeneste and Prefect of the Congregation of Sacred Rites, and Lucido M. Parocchi, Bishop of Oporto and Relator of the cause of Saint Rufina, together with the Reverend Father John Baptist Lugari, Promoter of the Sacred Faith, and myself, the undersigned Secretary, were summoned. And, in their presence, the following was solemnly declared: "It is established that there is martyrdom and the cause of martyrdom, as well as signs and miracles concerning the Venerable Servants of God, Father Dionysius of the Nativity and Brother Redemptus of the Cross, in the case and to the effect of which we are speaking." This Decree was ordered to be made public and recorded in the acts of the Sacred Congregation of Rites on the eighth day before the Kalends of April, in the year 1900.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation of Rites.

L. ® S. DIOMEDES PANICI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 577*]

577 FROM THE HOLY CONGREGATION OF THE COUNCIL OF Sandomierz. DECREE OF DISPENSATION. July 22, 1899. Session 24, chapter V. Concerning impediments to marriage. On October 15, 1892, Maria, a girl of noble birth and piously educated, who was barely approaching her seventeenth year, was lawfully married in Warsaw to Uladislaus, a doctor of medicine, then twenty-six years of age. However, this marriage, begun with mutual affection, did not have a happy outcome. For, although the spouses several times attempted to fulfill their conjugal duties, it is said that their

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efforts always proved fruitless, because the husband was afflicted with a vicious conformation of the vagina in his wife. Nevertheless, despite these difficulties, the spouses lived together peacefully for about two years, until the woman, having been informed by her husband that she was incapable of performing the conjugal act due to a physical impediment, and because, as she herself reports, she was exposed to the danger of a disease of the lungs due to the husband's continuous, but fruitless, attempts, in November of the year 1894, she bid farewell to her husband, and no further union took place. Shortly thereafter, the same woman sent a petition to the Bishop of Sandomierz, requesting that her marriage be declared null, or at least that a benevolent dispensation be granted, since it was not consummated; she also requested that the same Bishop, considering the testimonies of the spouses and witnesses in the city of Warsaw, have the proceedings conducted in this court. In truth, the court of Warsaw, through a delegation of the Bishop of Sandomierz, conducted a process concerning nullity: first, it heard the testimonies of the spouses, and afterward, it summoned seven witnesses from each side.

[*Latin ed. p. 578*]

578 From the records of the Sacred Congregation, inquiries were made concerning the truthfulness of the marriage. The woman was subjected to a judicial physical examination, which, with meticulous adherence to canonical prescriptions, was conducted in the presence of a matron by three midwives and two physicians. The man also underwent a physical examination by three expert physicians, of whom two declared him fully capable of the conjugal act, while only one acknowledged a relative impotence in him. After all these things were completed, the procedural records were transmitted to the Ordinary of Sandomierz, who, after considering all matters, although he admitted the non-consummation of this marriage, declared that there was not sufficient proof of nullity due to the husband's impotence. Therefore, it seemed more appropriate to the same Bishop that the woman should appeal to the Supreme Pontiff to obtain a dispensation from the valid but unconsummated marriage. Wherefore, the Bishop of Sandomierz, transmitting a copy of the records of the process to the Sacred Congregation, and recommending the woman's new petition, added the following: "In this state of affairs, granting the woman's request, so that the records of her case may be directed to Rome to obtain an Apostolic dispensation from the valid but unconsummated marriage, since all attempts at consummation of the marriage have been frustrated; moreover, as the process progresses, a separation and aversion of affections has arisen, so that no hope seems to exist for restoring the marriage. Furthermore, the woman's health, which, with further attempts at union, may have an unfortunate outcome, favors the dispensation. Finally, there is the danger of incontinence and scandal, both on the part of the woman and, even more

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so, on the part of the husband. For these reasons, transmitting a copy of the records of the process, I earnestly implore Your Holiness's clemency with the petitioners, that You deign to grant, by Your Apostolic power and benevolence, the grace of a dispensation concerning the aforementioned valid but unconsummated marriage."

[*Latin ed. p. 579*]

SANDOMIRIEN. 579. A SYNOPTIC DISCUSSION: THE OPINION OF A CANONIST. The documents present no difficulty; for although they are drawn up for the purpose of establishing impotence, they nevertheless contain nothing that ought to be omitted in cases of consummation; nor are they vitiated because they were not drawn up by a Reverend Father, who alone is competent in such matters, according to the Constitution of Benedict XIV, by the grace of God, § 15; indeed, it is now established by law that the proceedings carried out by Ordinary authorities within their ordinary jurisdiction in cases of impotence are valid, and, all other things being equal, should be used for the purpose of granting a dispensation, as declared by the Sacred Congregation of the Council in Warsaw, on June 16, 1894, in accordance with the Instruction of the Sacred Office to the Oriental Bishops, January 20, 1883, article last. Now, let us see whether the petition of the plaintiff should be accepted or rejected. And I believe it should be accepted; because it is clearly evident that two things are demonstrated in the matter, namely, that the marriage has remained unconsummated and that there are suitable reasons for granting a dispensation: the first of which is demonstrated by the argument. Both by canon law and by the most recent law, it is considered established that a marriage has not been consummated if this can be proven by the sworn testimony of the spouses, by the testimony of seven witnesses, and to the extent that it is possible by an examination of the bodies. But in the case in question, the unconsummation of the marriage is proven by this threefold argument. Therefore, it is established in the case that the marriage has not been consummated. The major premise is evident from canons 4 and 7 of *De Frig. et Malef.*, from the Instruction of the Sacred Congregation of the Council, August 22, 1840, from the Instruction of the Sacred Office, without date, from perpetual practice, and from the common opinion of Doctors. The minor premise is proven in parts from what is stated in the documents. a) As for the testimony of the spouses, the plaintiff, Marianna, testified under oath as follows: "I am absolutely certain that my husband has never been able to introduce his virile member into my genitalia, and that his semen has flowed out of me outside of my body."

[*Latin ed. p. 580*]

580 FROM THE HOLY GENERAL COUNCIL: "I do not know for what reason my husband has not consummated the marriage with me, even

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though he has often attempted to do so. However, my husband has declared to me that I am, with respect to him, weakly developed in my genitals... I am, indeed, quite certain that I am still a virgin. I base this conviction on the declaration of my husband, who, as a physician, is entirely competent to make such a declaration." The young woman, indeed, certainly knew from her own knowledge that she had been intimately united with Uladislaus in the aforementioned manner, and not otherwise. But, unaware, as is common among young girls, of the precise manner in which virginity is lost through intercourse, she learned from her husband that she had not lost her virginal integrity through that union. Uladislaus, the husband, swears: "One day after the blessed marriage, I attempted to fulfill the marital duty, but I was naturally unable to do so. I have, indeed, renewed these attempts daily, then twice or three times a week, but I have never consummated the union with my wife. During the times when I attempted to have intercourse, I was never able to break her hymen. I am certain that I have never had intercourse with my wife in a natural manner; the probable cause of this is the disproportion of our genital members." In addition to this, Uladislaus adds something else, which entirely excludes any suspicion of collusion. For, while he himself was a party in the proceedings concerning the impotence, he admits that he has never been able to have perfect intercourse with his wife, yet at the same time he affirms: "I have no defect in my genitals, nor have I seen any in my wife... I am convinced of my ability to have intercourse, and I have never doubted this." b) A second piece of evidence arises from seven witnesses. The actress presents seven witnesses, all of whom are relatives and neighbors, professing the Catholic faith, of mature age, married, of civil status, and, it seems, all of them are, without exception, older; who, under oath, affirm that she is pious, truthful, and entirely incapable of perjury; and therefore, that full credence should be given to her testimony. Thus, for example, Francisca Fracinishka says: "I know her (Marianna) to be...

[*Latin ed. p. 581*]

SANDOMLIRIEN. 581. Concerning a pious, just, and truthful woman, and I am convinced that she never uttered a sacrilegious oath... After the causes, which Marianna presents to request the nullity of the marriage, were declared to me by the judge, I judge that she testified truthfully, because I consider her to be a good Christian." And similar statements are made by others: furthermore, the testimony of the Bishop of Sanclomirien adds great weight to these statements, who, in a communication to the Holy See, concerning the matter in question, stated that Marianna "is a girl of respectable lineage and religiously educated." He also testifies favorably about the other spouse, based on testimony obtained by himself: Sophia Frecinska, who, on the one hand, says that Wladyslaw appeared to her "to be a virtuous and stable man... and that she has no basis for judging that he

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has not spoken the truth"; and, on the other hand, she ingenuously admits "that it is difficult for her to testify to the veracity of his judicial depositions," because she has only seen him twice, and only once has she spoken with him; the other six witnesses, with one voice, attest that Wladyslaw is a man worthy of trust, and that his wife is the same. To give just one or two examples, Ladislaus Donochowski, a professor of anatomy at the University of Varsaviae, who professes to be a Catholic and fulfills his religious duties, states: "I testify that Wladyslaw P is a virtuous, truthful, and religious man... I know his truthfulness, and therefore I am convinced that he testified sincerely and in accordance with his conscience in the protocol." Joseph Gradgicki testified: "Wladyslaw is considered by all to be a virtuous man, devoted to religion, and very religious... After it was declared to me that the spouses are requesting the invalidity of their marriage because they cannot have relations with each other, I am convinced that Wladyslaw testified truthfully." These statements are fully corroborated by others. The reader of the proceedings will not be able to question that, when all of the aforementioned witnesses were questioned, in accordance with the norms of the Holy Office, without a date, concerning the lack of consummation, the reasons why the marriage could not be consummated, the means used to remove those obstacles, etc., they responded, with the exception of the parents of Sabina.

[*Latin ed. p. 582*]

582 From the DECREES OF THE COUNCIL, it is stated that nothing was known before the deposition of the spouses was read. However, this does not invalidate the testimony from the seventh hand. It has been determined that witnesses of this kind do not offer a testimony of knowledge, but of credibility: namely, it is sufficient if they say, "that they have observed the religion and honesty of that spouse, so that it seems likely to them, and they believe that he has spoken the truth." *Inst. S. C. C. 22, August 1840. Regarding the matter of Sánchez, De Matrim., I, 7, disp. 108, n. 5: "The oath must be given differently by the spouses themselves and by relatives; for the spouses must give their oath based on certain knowledge: namely, the husband must swear that he has given diligent effort to the marriage in good faith and without deceit, and has not been able to consummate it; the wife, on the other hand, must swear that she has not been unyielding, and has not used any deceit. But relatives must swear based solely on credibility, namely, that it seems likely to them that the spouses are speaking the truth; and the reason for this difference is that it is known to the spouses that they have not been able to consummate the marriage, whereas this is not the case with relatives." It should be noted that four of the witnesses brought by Uladislao were from the seventh hand of the actress. Furthermore, regarding the strictness of the law, it would seem that witnesses brought by one spouse cannot be brought by the other spouse; for the canons *Laudabilem*

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and *Litterae vestrae de frig. et malef.* require distinct witnesses from both sides, that is, 14 witnesses; although this number is not expressly found in the aforementioned canons, this is how the doctors generally interpret them; as, for example, Pirhing, lib. IV, tit. XV, n. 17; Schmalzgrueber, p. 3, tit. XV, n. 89; Sánchez, *l.c.*, n. 11, to which is added the authentic interpretation through the aforementioned Instruction, year 1840, §. Then, the proceedings should continue. But even if those four witnesses from the side of Uladislao are to be considered legally inadmissible, nevertheless, the testimony from the seventh hand remains valid and effective. Valid, because the number of 14 witnesses is not absolutely necessary. "However," says Reiffenstuel, lib. IV, tit. XV, n. 56, "if so many witnesses cannot be conveniently obtained, fewer may suffice at the discretion of..."

[*Latin ed. p. 583*]

SANDOMIRIEN. 583, the judge, up to two; which perfectly corresponds to the jurisprudence of the Sacred Office. It is effective, because we have the asserted truth of Wladislai through two witnesses solely brought forth by him, and through the four aforementioned [witnesses], who, if not judicially, certainly extra-judicially, prove [the truth]: and this is sufficient in this matter, because, as in this case, when it is a question of requesting the grace of dispensation, not only judicial but also extra-judicial proofs are admitted. Urs. disc. cul. v. III, p. 2, disc. 22, c). The proof by inspection of bodies remains to be explained, namely, the body of each spouse; although in causes of consummation, only the woman is usually inspected, here, since a judgment of impotence was being made, the body of the man was also examined; and in both inspections cited, Instr. of August 22, 1840, was observed with the utmost care, especially concerning the probity, religion, and science of experts of both sexes. Indeed, three midwives, who examined Marianna, in their sworn testimonies, given in writing and verbally, unanimously affirm: "that the marriage had not been consummated, that the coitus had not been completed, and that (the girl) is infallibly a virgin." This certain judgment is based on the state in which the girl's body was found: therefore, the midwife Maria Paceysiska states: "In Marianna, the spouse, I found the structure of the body to be healthy, without defect; ... rounded, virginal breasts, small nipples, hidden, around the nipples, areolas sufficiently large, the abdomen without defect, like that of a virgin, without any wrinkles or cavities... the hymen is intact, semilunar: I noted that the small parts on the limits were slightly more prominent, on the right side, there was no secretion from the vagina. Furthermore, I add that the labia majora are adjacent..." And others testify similar things. In the oral testimony given to the doctors, and in the examination before the judge, they add that the hymen is thick, solid, does not yield, rose-colored, without scars, and barely allows the passage of the tip of the fifth finger. Each one notes, as Paceysiska soon added, a certain concavity or depression on

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the right side of the hymen; however, they say that it is very small, and not of greater extent than is a fourth of a centimeter.

[*Latin ed. p. 584*]

584 From the Sacred Council, three parts; and although they do not know whether this slight depression is congenital or rather due to futile attempts at intercourse, they are entirely certain that nothing can be deduced from it against the consummation of marriage. Two doctors, fully adhering to the judgment of the matron, are in charge of this examination, namely, Doctor Edward Przerowski, professor at the imperial university of Warsaw, and Doctor Edward Zielinski, a physician attached to the hospital in the suburb of Prague, both of whom, they say, are practicing Catholics. Indeed, in his written deposition, he says: "Based on obstetric reports, I have come to the conclusion that Marianna Sabina is an intact virgin." Then, explaining what should be thought about that concavity of the hymen, which the midwife Joanna Lignan calls in her report a "small, very significant sign of laceration," and in her oral deposition, "a small fracture," he says: "The edge of the hymenal opening has a small, superficial excavation on the right side. In the place of this excavation, the color of the hymen is not changed, the thickness is the same as in the surrounding areas, from which it is permissible to conclude that this excavation is not a healed rupture, but rather a congenital condition." Doctor Zielinski, after having duly reported what the midwives had stated, concludes: "I believe that Lady Marianna is a virgin; I have formed this opinion based on the appearance of her breasts, abdomen, and hymen. As for the small fold of the hymenal side, I consider this fold to be a congenital feature, because there is no scar." And this is sufficient regarding the examination of Marianna. They examined Uladislaus, as is customary, three doctors, who agree in describing his physical constitution, which they say is healthy, and does not exhibit any external signs of impotence; however, they note that the genitals, and especially the penis, whose length is 7 centimeters and whose circumference at the glans is approximately 8 centimeters, are less developed than would seem to be required given his overall physique. Furthermore, due to this disproportion of the limbs, and the heart condition with which Uladislaus suffers, and also due to the excessive width of his abdomen, two of the expert doctors...

[*Latin ed. p. 585*]

SANDOMIRIEN. 585 argues that he is either impotent, absolutely, or at least relatively, and permanently in the sense of canon law, at least to the extent that his inadequacy in relation to coitus is of a nature that cannot be cured. After these observations, it becomes clear what is the probative force of each examination: namely, the consummation of the marriage is certainly deduced from the physical integrity of the woman, which,

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without any hesitation, is affirmed by the five experts in the matter under the authority of the sacrament; not, however, from the impotence of the man, because, as the judge of Sandomirien rightly decides in his judgment, there are no such arguments regarding this impotence that would compel a prudent judgment. But the physical examination of Uladislaus provides stronger certainty regarding the woman's virginity. The dimensions of the penis mentioned above completely exclude the possibility of penetration into the vagina, the entrance of which barely admits the tip of the smallest finger; furthermore, although it is certainly not established that Uladislaus suffers from an impotence that is antecedent and permanent, which is capable of dissolving the marriage, nevertheless, it is beyond doubt that he possesses a certain male weakness; this weakness, if considered in conjunction with the fact that Mary's hymen is "thick, dense, and does not yield," sufficiently demonstrates why Uladislaus was unable to deflower his wife. Moreover, it is no secret that the force of evidence, as in contracts and crimes, so also in naked facts, is greatly increased if a cause proportionate to the matter can be adduced. Now that a greater proposition has been demonstrated to a lesser proposition from the beginning of the argument, the certain consequence that we deduced from it remains, namely, that the case of the non-consummation of the marriage is established. Our conclusion is confirmed by the argument from effects: namely, that two effects follow from the attempted consummation of the marriage, which has been attempted several times and never completed, one negative, namely, the absence of conception, and the other positive, namely, the loss of virility and the disturbance of the internal organs, of which morbid condition mention is also made in c. III de frig. et malef. But these two effects are not present in Marianna.

[*Latin ed. p. 586*]

586 The documents of the Council of Sabina abundantly demonstrate that this place has held such a position until now. This is confirmed by a second opinion of the Curia of Sandomierz, in which the judge declares that, from the acts and proven facts, Marianna Sabina "remains in the state of virginity." This is further confirmed by several decisions of the Sacred Congregation of the Council, in which, in cases similar to this one, a response was given in favor of dispensation and the granting of grace; thus, for example, in Venice on July 28, 1860, in Naples on August 18, 1866, in January 9, 1866, in Naples on August 18, 1888, in Warsaw on January 20, 1894, and in Lucerne on May 22, 1895. In these cases, the same circumstances were present as in the present case, namely, prolonged sleep for several months and years, repeated attempts at intercourse, similar signs of virginity, although not without some defect, especially concerning the state of the hymen, and nevertheless, the Sacred Congregation of the Council generally decided that the doubt: "Whether it is advisable to respond

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affirmatively, etc.," should be resolved in the affirmative. Having established the lack of consummation of the marriage, I will briefly speak of the reasons that seem to suggest that a dispensation should be granted in this matter. The Ordinary neatly summarizes these reasons, which were noted throughout the process, in a report in which, transmitting the acts of the trial held in Sandomierz to Rome, he recommends the petition of the plaintiff. "After having, through my delegation, completed the legal proceedings in the Archdiocesan Court of Warsaw, and having received the acts of the case, after carefully reading and examining the established facts, it appeared that the marriage of the plaintiff, Mary, with her husband, Vladislav, had not yet been consummated, and that the plaintiff remained in the state of virginity; nevertheless, the existence of impotence in said marriage has not been sufficiently demonstrated. In this state of affairs, I approve of the plaintiff's prayers, and I direct that the acts of her case be sent to Rome, in order to obtain an apostolic dispensation from the valid but unconsummated marriage," he writes. For, from these fruitless attempts at the consummation of the marriage, especially during the course of the proceedings, a separation and aversion of affections has arisen, so that no hope of restoring the marriage seems to exist.

[*Latin ed. p. 587*]

SANDOMIRIEN. 587 Furthermore, the woman's health favors the granting of a dispensation, as her condition, with further experience of the marriage, may have an unhappy outcome. Finally, there is the danger of incontinence and scandal, both on the part of the woman and, even more so, on the part of the man... ». Therefore, the following circumstances concur: 1° a serious doubt of the ability to consummate the marriage, after a two-year period of good faith and diligent effort by the spouses, during which they have never been able to achieve it; 2° a separation of souls without any probable hope of reconciliation; 3° the danger, for the woman, of completely losing her health; 4° the danger, for both parties, of incontinence and scandal; namely, four causes, each of which, according to long-established practice and the common opinion of Doctors, is sufficient for granting a dispensation according to Canon Law. *Clericato De matr. decis. 15; Ursaya, vol. 3, p. 2, discept. 21, n. 104; Sánchez De matr., lib. 12, disp. 15, n. 19; Schmalz, IV, XIX, n. 53 seq.; De Iustis De dispens., II, X, n. 21-34.

ANIMADVERSIONES DEFENSORIS MATRIMONII EX OFFICIO. As the marriage, which Mariana, then 17 years old, contracted on October 15, 1892, with the archpriest Wladislao, then 26 years old, reveals, it proclaims a work imperfectly begun. Nor does Wladislao contradict Mariana. If you were to hear Wladislao and Mariana, although they have lived together for two years and more, and have indulged in pleasures according to their abilities, it has never been possible for the man to penetrate his wife. But what the spouses say orally is not confirmed by evidence. Indeed, three

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midwives, who, at the order of the judge, examined Mariana's body, report certain signs of lost virginity. When asked: "What is the difference between a woman who is a virgin and one who is not? Have you observed this difference correctly in the body you have examined?" One of the midwives replied without hesitation: "The difference between a virgin and a woman who has consummated marriage...".

[*Latin ed. p. 588*]

588 From the Sacred Council, I find nothing concerning the matter at hand, regarding the lady of Mariana. After investigating the women of Mariana, I have come to the persuasion that there were attempts to consummate the marriage, because "there is a small rupture in the hymen." Nor should we disregard what another midwife reports, saying: "I have nothing further to add, except that I found the hymen with wrinkled sides, which may be congenital, or even from an attempt to consummate the marriage. On the right side, there was a greater concavity, which may proceed from an attempt to consummate the marriage; however, this concavity is not more than 1/2 centimeter." Furthermore, the impotence of the man, to whom the incompletion of the marriage is attributed, is clearly excluded by the learned physician, Edward Bondy, who states: "My opinion is entirely firm and certain, and not only do I judge the man to be absolutely potent, but I also believe that, if he has not consummated the marriage with his wife, this proceeds from an inconvenient construction of the vagina, from a narrow entrance of the vagina, or from tissues that do not yield. In this case, there is a relative impotence." Finally, collusion between the spouses, against which Pope Celestine III warns us in chapter 5 concerning him who has investigated, etc., is present in this case, and is evident from the fact that the man uses his wife's relatives as witnesses; and these, especially the mother of the actress and the father, extol the virtues of the son-in-law (which is a marvel). Indeed, Sophia, the mother of Mariana, testifies under oath: "I judge Wladislaus to be a virtuous, truthful, and religious man, for I saw him in the church at the time of public prayer..." I am persuaded of this, because "Wladislaus stated in the judicial protocol that he had stated everything sincerely and in accordance with his conscience, because, as I have read in his deposition, his wife, my daughter, has told me of the impossibility of consummating the marriage."

[*Latin ed. p. 589*]

SANDOMIRIEN. 589 Neither does Conrad, the actress's father, disagree with Sophia. For he himself said: "I am persuaded of this, that Wladislaus is a man of integrity, pious, devoted to religion; otherwise, I would not have given him my daughter in marriage." He continued, "I am persuaded that Wladislaus has stated everything sincerely in the protocol, and in accordance with his conscience, because concerning each matter pertaining to

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the impossibility of cohabiting with his wife, there had already been discussion between us beforehand." With these considerations, the doubt was to be resolved. Whether it is necessary to consult the Most Holy Congregation regarding a dispensation in the case of a marriage that is valid but not consummated. RESOLUTION. The Sacred Congregation, after deliberation on this matter on July 22, 1899, decided to respond: Affirmative. MECHLINIEN. DISPENSATION FOR MARRIAGE. July 22, 1899. Session 24, chapter 5, concerning marriage. SUMMARY OF THE FACTS. The present case, concerning a marriage that is valid but not consummated, was presented to the Sacred Congregation by the Most Reverend Archbishop, who transmitted it to the Congregation, and which closely corresponds to the proceedings before the Curia. Joseph Van R., born on March 26, 1868, and Elizabeth Van der V., born on August 9, 1875, both subjects of the diocese of Mechlin, were married on April 9, 1894. However, they only cohabited for six months; during this period, the wife constantly refused the conjugal duty, claiming, according to the husband, that he was afflicted with a pulmonary disease. Although he was indeed ill, and wished to move to Brussels, a nearby town, where he has a position, the woman refused to follow him, and then, by order of a judge,

[*Latin ed. p. 590*]

590 From the Civil Canon Law Court, a divorce was requested, which was granted in December of the year 1896; thus, full freedom has been obtained with respect to civil matters. Since all hope of continuing to live with his wife has now vanished, the husband presented a petition requesting a Pontifical dispensation in a valid, but unconsummated, marriage. The husband himself asserts that this marriage has never been consummated, and this appears to be confirmed by the testimonies of medical experts, who examined the woman's body in order to facilitate the civil divorce.

A Synopsis of the Canonist's Opinion:

First. — In matters concerning marriage, the greatest caution must be exercised. The Instruction "Cum monuat Glossa" advises.

Second. — A moral certainty is necessarily required in the judge in order to render a judgment in such cases.

Common.

Third. — In cases concerning the non-consummation of marriage, "the parties are absolved by sworn depositions, with sworn testimony of seven witnesses, and an examination of the bodies (especially of the woman); in which, concerning the essential elements, the norms established by the Sacred Congregation of the Council and by the Sacred Congregation of the Holy Office must be observed, lest the proceedings be vitiated by nullity." Gasparri, *De matrimonio*, chapter IX, number 1197.

However, the most esteemed author adds in a note: "We have said

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concerning the essential elements, because, for example, in the *Curia Parisiensi* [Paris], the examination of the woman's body is not performed by midwives, but by two experts, with the assistance not of a midwife, but of a religious sister who provides assistance to women in childbirth; the examination of the man's body is not performed by five, but by two experts; furthermore, the judge, the defender of the marriage, and the notary never attend, at a fixed day and hour, at the place of the examination; and yet the Sacred Congregation of the Council does not always approve of the proceedings of that Court." *Id.*, ibid.

[*Latin ed. p. 591*]

MECHLINIEN. 591 Fourth. — "If, in some places, skilled midwives are not available, and the examination of the woman's body is judged to be entirely necessary, this should be entrusted to expert physicians, of grave character and advanced age." Instruction of the Sacred Office, June 20, 1883, title 6, article 5, number 49. Fifth. — "If both spouses are in agreement in their testimonies, the judge and the defender of the marriage should diligently examine whether collusion exists between them." Instruction of the Sacred Office, title 3, number 17. Sixth. — "Lest anyone be subject to the fear of collusion and deceit... the confession (of the spouses) should not be bare, but supported by other proofs, with which, concurring, it may be useful for the dissolution of the matrimonial bond, as considered by the Prefect in chapter Laudabilem 5, number 4, De frigid, et malefic, Spada, Ursaya, Rott, after Zacch., Cardinal de Luca, etc." Cosci, Handbook 3, chapter 2, number 145. Seventh. — "The cohabitation of the betrothed establishes a presumption of law, and of right. Gloss on Canon Si quis 3, word Tempore, Cause 33, question 1 - there - Also, because she was alone with him, it is believed that she knew it, according to Ovid: Should a maiden be believed to have yielded to a young man?" Cosci, book 1, chapter 16, number 19. Eighth. — "Against the presumption of law, and of right, proof to the contrary is not regularly admitted. Thus, the text expressly cited, C. Is qui fidem 30 de Sponsalibus, there: Against such a presumption, no proof is to be admitted." Reiffenstuel, book 2 of Decretals, title 23, on Presumptions... Ninth. — "However, since presumption yields to truth (L. Imperatores, ff. de Probation.), even the presumption of law, and of right, can be dispelled by truth duly proven. This proof, without a doubt, can be provided by the means set forth in the Instructions "Cum moneat Glossa" and "Quemadmodum," cited above. Tenth. — "Therefore, Cosci rightly says, with Ursaya, that the cohabitation of spouses does not cause the marriage to lose its quality and denomination of a contract when it occurs with consent."

[*Latin ed. p. 592*]

592 From the summary of the Sacred Council: "It was not." Ursaya, Disputations Ecclesiastical, title 2, part 1, disputation 3, number 47. Eleventh.

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— Marriage is considered valid only if the hymen, which covers the vagina, is intact; for this indicates that semen has not been introduced into the vagina. Physicians report that they have sometimes found women after childbirth, and prostitutes, with an intact hymen. But these cases are very rare; and furthermore, childbirth and other signs, which physicians know, indicate that a complete act of intercourse has taken place. Therefore, justly and according to the law, the Sacred Congregation holds that marriage, with an intact hymen, is not considered consummated, unless another fact is established by the examination and testimony of physicians. Gasparri, On Marriage, chapter 8, number 1065. Twelfth. — It is fitting to transcribe here something that was said in a case from Barcelona, whose judgment the Sacred Congregation rendered on July 25, 1896, namely: "We are not speaking of the essence or of the essential requirements for generation, but of the essentials constitutive of marriage: namely, that generation, under the genus of action, is contained; whereas this [union] refers to the genus of union, which implies a relationship. Therefore, given that the mixture of semen suitable for generation could occur without a real union of man and woman, nothing would follow that contradicts our thesis, in which we treat of the consummation of the union of the sexes, and not of the consummation of the act, solely in order for generation." And further: "To the difficulty regarding the commingling of the parts of man and woman, we respond: in such a hypothesis, the generation of a human being is consummated, but not the marriage." The Angelic Doctor says (Supplement 3, part 2, question 44, article 1) that marriage is of the genus of relationship, and is nothing other than a conjunction. Marriage is of the genus of conjunction. The conjunction of bodies and souls follows from marriage. With these last words, St. Thomas intends to signify that the essence of the matrimonial bond is preserved without effective conjunction of bodies, and yet such a bodily conjunction perfects, completes, and consummates the marriage. Thirteenth. — Among the legitimate causes for dispensation—

[*Latin ed. p. 593*]

MECHLIN. 395 The reasons for the nullity of marriage, which have not been consummated, are enumerated: "Dissociation of wills without hope of reconciliation, peace of conscience, and tranquility of mind." Then, the Consultor, regarding the first question, whether there is proof of the non-consummation of the marriage, states: "We do not deny that there may be some difficulty in maintaining the affirmative, considering that the spouses have remained in the same bed for at least six months, with the husband repeatedly attempting copulation, which the wife consistently and repeatedly denies." The husband, when questioned, "Have you often tried to consummate the marriage, and do you believe that during these attempts the act was ever consummated?" replied: "Yes, I have often tried to consummate the marriage; I took my wife in my arms, but she pushed me

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away. Erection occurred with the loss of semen, but outside the woman's organs. The member was erect, but it never penetrated; moreover, I was ignorant in these matters, and my wife writhed in her skirts." The wife, for her part, made this confession: "We remained together for about eleven months. We always occupied the same bed." From this double confession of the spouses, it is evident that there is a very strong presumption of the law, and by law, in favor of the consummation, according to the seventh principle established above. This presumption, unless stronger arguments invalidate it, must necessarily be followed as the definitive criterion for asserting the consummation of the marriage. However, as we believe that such stronger arguments are not lacking, it is certain that the marriage was not consummated. We draw this certainty from three mutually corroborating sources: 1. The confession of the spouses, corroborated; 2. The depositions of seven witnesses, with ocular inspection; 3. The explanation of the physicians. The husband's testimony regarding the non-consummation is found in the Acts, Volume XXXII, page CCCLXXXII.

[*Latin ed. p. 594*]

594 FROM THE HOLY GENERAL COUNCIL on marriage; concerning the cause of non-consummation; concerning the time of their cohabitation; concerning the hope of mutual reconciliation. The husband asserts: "I affirm that I have never consummated the marriage; there has never been any penetration with the emission of semen into the vagina." "My wife submitted to the examination of two doctors from Braine l'Allend in order to obtain the nullity of her marriage. This examination provided proof that she was still a virgin; this is stipulated in the judgment of October 16, 1896, in the following terms: - Whereas it is established by the testimony of the experts who examined the plaintiff that she is still a virgin, that she has never had contact with a man, and that she is perfectly capable of having sexual relations, etc. - This medical examination took place when we were definitively separated." The wife confesses: "I affirm that our marriage has never been consummated." "I submitted to the medical examination of Doctors Charlier and Severin of Braine l'Allend on July 10, 1895. This examination provided proof that the marriage had not been consummated. It took place after I had been definitively separated from my husband. Furthermore, I underwent a medical examination by Doctors Vleminckr, Lebrun, and Stevens, appointed by the President of the Court of First Instance, and these examinations also provided proof of the non-consummation of the marriage." In response, she says: "I am willing to submit to the same examination, and I am certain that it will provide proof of the non-consummation of the marriage." The husband continues: "The absolute refusal of my wife was the main cause, and given her young age, I did not want to use force against her." "Following the letter that my wife addressed to me on March 12, 1895, requesting a medical certificate stating

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that I was unable to fulfill the marital duty, I went, on March 14, 1895..."

[*Latin ed. p. 595*]

MECHLINIEN. At the residence of Mr. Dr. Glanckaert, located at 86, Rue de la Presse, Brussels, who was treating me for my bronchitis, and who, after examining me, provided a medical certificate stating that I was not afflicted with any malformation of the generative organs. The woman declares: "If the marriage was not consummated, it is because my husband did not request to exercise his right." The husband further states: "We remained together for a period of six months." The wife affirms: "We remained together for approximately eleven months." Regarding the hope of mutual reconciliation. The husband responds: "I believe that it is quite impossible to resume the common life, since the civil divorce has been obtained and pronounced. Furthermore, life would be impossible, and she herself would not desire it." The wife asserts: "I believe that it is quite impossible to resume the common life. Experience has proven to me that we could not live together." The seventh witness, on the husband's side, declares: "Dominus Ioannis Bols, the parish priest of Alsemberg, states: 'I believe in the veracity of Joseph, and if the mother were not present, I would believe in the veracity of Elise.'" The sister of the husband testifies: "Yes, you can trust in the veracity of my brother Joseph, for he is very religious, and incapable of making a false oath," which is confirmed by five other witnesses. The witnesses confirm that the marriage was not consummated, due to the husband's ignorance regarding marital matters, and due to the wife's bad will. All the witnesses, on the husband's side, attribute the cause of the separation of the spouses primarily to the wife, who, as she should have, did not wish to move to Brussels, when he wished and decided to go there for the sake of his health and for the easier performance of his duties.

[*Latin ed. p. 596*]

396 FROM THE HOLY COUNCIL: According to the testimonies of the witnesses, there remains no hope whatsoever for the reconciliation of the betrothed, especially on account of the woman, who, having obtained a civil divorce, has placed an almost insurmountable obstacle to reconciliation. Furthermore, the husband, although perhaps better disposed towards reconciliation with his betrothed, has suffered such things that he was, for a time, affected by insanity, and he could fall into that state again, perhaps permanently, if he were forced to return to the woman, who is completely estranged from his love. From all that has been said and explained thus far, it is permissible to present, in a concise manner, the following: 1. All the witnesses of the seventh class extol the truthfulness, sincerity, religion, and piety of the betrothed man with the highest praise. [The witnesses for the woman speak only of her. 2. The truthfulness of the woman is also confirmed by five witnesses presented by herself, to whom

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are added three other witnesses for the man, who defend the woman's truthfulness and religion, but somewhat less emphatically, and also defend the man. 3. The testimonies of both spouses, and of the witnesses of the seventh class, except for two or three, and of the seven doctors, attest to the lack of consummation. However, the witnesses of the seventh class especially emphasize the lack of said consummation and the absence of reciprocal love between the spouses. 4. Although both betrothed agree in affirming the lack of consummation of the marriage, their declarations differ in two respects: 1. In assigning the cause of the lack of consummation: the husband attributes it to the wife's aversion, while the wife attributes it to the husband's impotence. However, she falsely, or without foundation, imputes this impotence, firstly because it contradicts the information of a certain doctor, whose testimony is presented by the husband, and secondly, especially because the woman herself repeatedly and stubbornly attempts to affirm that her husband never attempted to consummate the marriage; 2. They differ...

[*Latin ed. p. 597*]

MECHLINIEN. 597. Even spouses, in determining the duration of their mutual cohabitation. However, this discrepancy is easily resolved by the words of the bridegroom, namely: "In the month of October 1894, being seriously afflicted with bronchitis, I remained at my parents' home in Bruxellis, and I only returned to Alsemberg one or two times a week, and on Sundays." Therefore, from this explanation, it is clearly deduced that the woman also included this time, during which the husband remained in Bruxellis, visiting her in Alsemberg. 5. From the declarations of the spouses, and from almost all the testimonies of the seventh hand, it is evident that the marriage was contracted somewhat inconsiderately on the part of the husband, and not with a very spontaneous intention on the part of the wife, rather, she was led by the will of her mother, than by the desire of the bridegroom. 6. Therefore, it is not surprising that the estrangement between the spouses grew more and more each day. 7. Indeed, this estrangement progressed to such an extent that, according to the unanimous testimony of both the spouses and the seventh hand of witnesses, reconciliation has become absolutely impossible. Finally, from the evidence and explanations presented above, it is clear that the legal presumption does not apply, and that, with moral certainty, we can assert that the marriage in question was not consummated. For, firstly, there is the confession of the spouses, which confession, being confirmed by oath, has the greatest force, unless otherwise demonstrated, and collusion is not to be feared. (This is the common opinion among Canonists and is derived from cap. Laudabilem, De frig. et malef.). However, collusion is not to be feared because of the husband's remarkable sincerity and ingenuousness, nor because of the truthfulness and religion of the witnesses of the seventh hand, which have been praised

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above all. Furthermore, a certain discrepancy, which is found between the deposition of the bride and her husband, seems to exclude such collusion; 2° the depositions of the witnesses of the seventh hand, from which not a single doubt, nor even the smallest doubt, arises about the consummation of the marriage, rather,

[*Latin ed. p. 598*]

598. Ex decreto Sacri Concilii, omnes, praeter duas sorores sponsae, quas suam ignorantiam affirment, sunt testantes de non consummatione; 3°. Declarationes medicorum, numero septem, virginitatem sponsae argumentis validissimis probant. 4°. Defectus amoris mutui, praecipue causa mulieris, iudicium huius non consummationis certe non spernendum est. Quoad vero, si dispensatio super matrimonium ratum et non consummatum exporiri debeat, Consultor censuit respondendum affirmative, nam: 1°. Omnis spes reconciliationis sponsorum iam evanuit; 2°. Salus animae eorum hoc exigit; 3°. Et etiam corporum, sponsus enim in insaniam incidit, in quam posset iterum de novo incurrere. Defectus qui in processu explicatione reperiuntur non putamus substantiales esse. Hi autem defectus consistunt: 1° in numero quinario, non septenario, testium pro muliere; 2° in eo quod non adhibitae sunt obstetrices et matrona honesta. Nec officere potest benignitati SSm. quod mulier ad Tribunal Civile accesserat pro divortio procurando; nam sponsus innocens est ab hac culpa et non debet aliquis alterius odio praegravari (Reg. 22 in 6); nec deest forsitan aliqua excusatio ex parte mulieris, uti advertit Em. Card. Arch. Mechlinien. In eius verbis: « Vir ipse valde pius est. Uxor quidem pro divortio ad legem civilem confugit, antequam adiret tribunal Ecclesiasticum, at id bona fide fecisse videtur; idque apud nos infeliciter a multis non satis instructis fit, quasi pro matrimonio dissolvendo esset eadem norma servanda ac pro eo contrahendo: contrahi autem ex lege civili non potest ante impletas formas civiles».

ANIMADVERSIONES DEFENSORIS MATRIMONII EX OFFICIO. Anno 1874, die mensis Aprilis 9, Joseph, aetate annorum 26, Elisabetham, 20 annos natam, matrimonio sibi coniunxit. At posteaquam neo-coniugi una simul cohabitaverant per, 11 circiter menses, Elisabeth labente Martio anni 1895 viro valedixit.

[*Latin ed. p. 599*]

MECHLINIEN. 599 Subsequently, the man was brought before a secular tribunal: "I requested (said Elizabeth) a civil divorce because I believed it was no longer possible to live with my husband. The tribunal granted the civil divorce, because the marriage had not been consummated, and it considered this a grave offense to me." In light of these circumstances, Joseph, on March 26, 1898, presented a petition to the Most Holy Prince, requesting a dispensation from marriage, which both spouses claim was

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not consummated. First of all, I can raise doubts about the alleged lack of consummation of the marriage. Indeed, the doctor, Van Hoof, who was called to examine the matter, when questioned by the judge: "Do you have any reason to believe that there was no penetration whatsoever? What are those reasons?" replied: "I have no reason to believe that any attempt at penetration occurred. My examination gives me no reason to believe that any attempt at penetration occurred." The doctor's response is far from direct. For, when pressed to provide arguments that would exclude the consummation of the marriage, and asked: "Do you have any reason to believe that there was no penetration whatsoever?", he was content to state that he had no arguments readily available to prove the consummation of the marriage. "I have no reason to believe that any attempt at penetration occurred." Furthermore, even if we were to concede that the marriage remained imperfectly consummated, Joseph would gain nothing. For it is established that the spouses cohabited for a sufficiently long period; and no one doubts the woman's ability. Therefore, it would indeed be necessary to prevent Joseph from entering into another marriage, because it is forbidden to expose the Sacrament to the danger of nullity; but it would also be feared that the spouses may have conspired with each other. For it is not easily believed that Joseph would take action against the marriage.

[*Latin ed. p. 600*]

600 From the Holy General Council, it was decreed that, unless it benefits the wife, the marriage should not be dissolved. With these premises, the matter to be considered was whether to consult with the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated, in a certain case.

RESOLUTION. The Sacred Congregation, after deliberation on July 22, 1899, decided to respond: Affirmative.

AUGUSTANA, December 16, 1899.

VOLUNTATIS, Sess. 22, cap. 8, de Ref.

The Bishop of Augusta addressed the Sacred Congregation with certain questions arising from the interpretation of a certain will: "The undersigned Bishop, with due reverence, reports that the heirs of Andrea Due, a priest of the Diocese of Augusta, by virtue of a certain instrument of October 12, 1821, have donated 2000 livres to the Seminary of Augusta, on the condition that the income from this sum be used to support a student of the Minor Seminary, in the following order: 'For the children of families of the parents of the aforementioned deceased, preferably; and, in their absence, for the children of families of the Commune of Torgnon; and, in the absence of those, for those of the parish of Chambave, who possess the qualities required to be admitted to the aforementioned Minor Seminary by the ecclesiastical superiors.'

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"Now the question is asked: 'Can students descended from the aforementioned benefactors in the female line, as relatives, claim this support for themselves?'

COMPENDIUM FACTI.

[*Latin ed. p. 601*]

AUGUSTANA 601 « 2. Whether this assistance should be granted to a properly designated student, as to a usufructuary, until the completion of his philosophical studies, or whether, merely by the fact that a student is received from families of the Due lineage into the Minor Seminary, he should have an immediate right to this same assistance, excluding the previously designated one, so that the latter should yield his place to the student of the Due lineage, and perhaps even abandon his studies? » « The following is recorded concerning the endowment of the priest Andrea Due: 'It was agreed and stipulated that the co-heir of the aforementioned deceased Reverend Lord, who would, by right of inheritance, enjoy the use of the granary of Chandiana, in the territory of Chambave... would be obligated to pay, within two years from the day following yesterday, without any income, the sum of two thousand new Livres to the Treasury or to the legally established Procurator of the Minor Seminary of Aosta, and, in his default, to the Treasury destined for the Major Seminary of the same diocese, on the express condition and stipulation that the income from said capital, which will only be collected after the aforementioned two years, be distributed as assistance to the children of the families of the Duc lineage related to the aforementioned deceased Reverend Lord, and, in the absence of such, to the children of the Commune of Torgnon, and, in their absence, to the children of the parish of Chambave, who possess the qualifications required to be admitted to the aforementioned Minor Seminary by the ecclesiastical superiors, and, in the case that there are no candidates from the aforementioned Duc families or from the two aforementioned parishes in the Minor Seminary, but there are such in the Major Seminary, the income from said capital will be distributed to them, provided that the ecclesiastical superiors concerned deem it appropriate.' » « Regarding the duration of the usufruct of the assistance in question, the following practice is observed: the designated student, and one in possession of such rights, shall enjoy this assistance until the completion of his philosophical studies. » « It should also be noted that, in the year of this foundation, 1821, philosophical lectures were held in the College or in the Minor Seminary. In the year 1870, this... »

[*Latin ed. p. 602*]

602 The course of the S. C. [Sacra Congregatio, Holy Congregation] was transferred to the Major Seminary. Nevertheless, as is customary, the par-

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ticular subsidies, which are granted to students who are entitled to them, continue to be distributed in the Seminary, even in the Major Seminary, until the completion of the philosophical curriculum. Therefore, I am permitted to add a third question to my humble petition: "III. Should this subsidy be granted to students duly designated, even in the Major Seminary, who are engaged in philosophical studies for two years?" The Bishop reported on November 5, 1899: "I submitted a petition to Your Eminence on June 13, 1899, which was followed by another petition on June 30 of the same month, requesting an authentic interpretation of a certain clause in the foundation established by the priest Andrea Duc, which benefits some students of the Minor Seminary of Augsburg. In the latter petition, I mentioned the practice that has been observed up to now in the Diocese of Augsburg, namely, that a student, who is the beneficiary of a subsidy granted to him, retains the use of that subsidy until he completes his studies, although during this time it may perhaps be needed by other students, who are relatives of the founder." "Since the proposed question has not yet been resolved, I would not want Your Eminence to be bothered by some declarations drawn from public documents, which support and impose such a practice. Indeed, in this Diocese, almost all the instruments, in this modern age, which contain foundations for students, and especially for relatives of the founders, include this clause, that those, whether related to the founder by blood or not, should constantly enjoy the subsidy granted to them until the completion of the course of philosophy or theology." "Indeed, by his will, dated May 5, 1840, the canon and parish priest, Johannes Antonius Pramotton, bequeathed "pour aider et secourir un jeune homme de bonne espérance dans ses études depuis la cinquième jusqu'en théologie inclusivement." The priest Caesar Glarey, in his will, made a similar provision."

[*Latin ed. p. 603*]

AUGUSTANA, on the 25th of February, 1865, established "funds for the maintenance of a young man in his studies from his entry into the College until his definitive departure." Furthermore, we read in the will of the parish priest Blasii Prince, dated April 18, 1866: "To provide for a student from the Commune of Ayas in the College of Studies established in the city of Aosta, up to and including the Physics class." Similarly, the Reverend Monsignor Iacobus Jans, Bishop of Augustensis, on December 1, 1868, established a bequest "to assist in the education of a young man from the parish of Lilianes, aspiring to the ecclesiastical state... He shall enjoy this subsidy until the end of the course of Philosophy." Likewise, on August 25, 1876, the canon Ludo vicus Gorret stated: "This scholarship is established for students who are destined for the ecclesiastical state, and it shall provide them with subsidies during their studies until their promotion to the priesthood." "Therefore, it is evident that the founders of these pious bequests for the students of the Diocese of Augustensis intended

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and stipulated that these students, whether they are from their own lineage or from elsewhere, provided that they are properly enrolled in the institution, should enjoy the subsidy granted to them, until the completion of their philosophical or theological studies. These general provisions appear to be applicable to the aforementioned foundation of the priest Andreae Due, by analogy. These things are said with due deference to a better judgment." Furthermore, it should be noted that, in the records of the foundation, mention is made of admitting students into Seminaries, which in France are called *parva* (small). In these Seminaries, because the curriculum of studies, according to the accepted custom, extends up to the philosophical course, the founder's will has been carried out, in effect, so that subsidies are granted to the students until the completion of their philosophical studies. But in the Diocese of Augustana, since the year 1870, the philosophical course is completed in the larger Seminary. Therefore, the reason for doubt arises as to whether the subsidy granted by the priest Due should still be provided to students who are not in the smaller Seminary.

[*Latin ed. p. 604*]

604 From the General Council, as he himself expressly warned, but they are more involved in philosophical studies. Two other questions arise: first, whether assistance is due to those descended from the female line as well as the male line, and who are also priests, i.e., consanguineous; second, whether assistance once granted to a student, even if not a consanguineous priest, should be retained by the same benefactor, even if the student, having completed his philosophical studies, is soon admitted to the Seminary, until a certain consanguineous relative or another person called by the testator himself is found.

A Synopsis of the Discussion:

A few observations have been made regarding the first reason for doubt. It is asked whether the priest in question has called his consanguineous relatives; whether, that is, only those descended from the male line are included; or whether those descended from the female line are also included. The words of the testator are: "to be distributed in assistance for the children of the families of the two parents of the aforementioned Reverend Lord." Therefore, the testator calls "families," or those descended from the same stock, common with the testator, and thus, his consanguineous relatives. Canonists discuss these questions primarily in matters concerning the law of patronage.

* *De Luca, De iure patronato, Disputatio 26, n. 6.*

* *In general, "familia" denotes agnatic relationship, and "familia" ordinarily means the same as "agnatio."*

* *The term "agnatio" includes all those connected by the male sex; see

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I. iurisconsultus, 10, § 2 ff. On degrees; Peregrinus, Consilia, 149, n. 22, lib. 5.*

* *A "familia" is said to be either effective or inclusive.*

* *An "effective" family is that in which the testator or disposer is the efficient cause or the root, and therefore, it is limited only to the descendants of the founder or testator himself.*

* *An "inclusive" family includes all agnates or descendants from the collateral brothers of the founder or testator. Whether descendants from sisters, or cognates, are included.*

[*Latin ed. p. 605*]

Aosta 605, or any relative whatsoever, is inquired about. Furthermore, in this matter, it is certainly only about the encompassing family, if we are speaking of the relatives of the priest Due, who are understood to have descendants or children. Regarding the encompassing family, Ferraris has the following in *De Familia*, chapter 16: "Women do not come under the designation of family when the testator has expressly named the proper name of the family, as when he said, 'it shall remain in the house or family of Ghilna,' because then, since lineage is preserved only through the male line, women will be excluded; *Peregrin. De Fideicommissis*, article 25, paragraph 24, and paragraph 57, etc." However, in the same Ferraris, in the aforementioned passage, the following is stated in note number 1: "In later times, the Rota [of the Roman Apostolic Signatura] has gone back to the opposite opinion, namely that those related by blood are included in the designation of family no less than those related by marriage, as in 1) the Theologal Canon of Milan, concerning reserved matters, February 9, 1759, § 11, and June 18 of the same year, § 3, before Ratta, the Dean; 2) in the Canon of Piacenza, June 17, 1780, § 3, before Soderino. Indeed, it is not sufficient that the name of the family indicates only those related by blood, so that a surname is added to it. This can be added in two ways: personally, and impersonally. In the first case, as if it were said, 'I establish the family of Titus,' therefore, the surname is added personally to the person of Titus, and therefore, both those related by blood and those related by marriage are considered to be of the family of Titus, since both can rightly be said to be of the family of Titus. Otherwise, it is different if, without a designated person, the family of Montalcina is named. In this case, since only those related by blood bear the surname of the named family, and therefore, excluding those related by marriage, they should only be called those related by blood, as the same Rota distinguished, before Zanario, in decision 99, paragraph 8; before Rezonico, in decision 14, paragraph 6, etc." If this distinction were applicable to our case, it would be said that only those related by blood are called to contribute to the support of studies, from the family of Due; that is, all those who bear this surname; provided that the call is made impersonally, that is, without a distinct and expressed

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person, but the family is indicated by the surname.

[*Latin ed. p. 606*]

606 From the Decrees of the Council, it must be carefully considered what is stated by Amato in *De causis*, Book III, chapter 5, paragraphs 47 and following; who, speaking of relatives called to chaplaincies and other sacred offices, teaches that if the founder does not name certain individuals, it is his will that a more worthy person be chosen from among the relatives, without preserving the privilege of proximity; and he continues in paragraph 41: "Therefore, it must be asserted with greater force that this opinion should be observed if the founder says: 'Let a relative be chosen from his family, without adding the quality of proximity; for his intention is that anyone may be chosen from the family at that time.' Silva, *De qualitatibus praelatorum*, paragraph 37 (42). In these ecclesiastical chaplaincies, it should be noted that if descendants are called to them, and yet there is no mention of preserving agnatic relationships, if two happen to be of the same degree, the one descended from the male line is not preferred, but the one who is closer in both lines is preferred, this distinction being set aside." In order to understand how to interpret such last wills and testaments, and to apply them to established rules of jurisprudence, it is helpful to recall one or the other decision. In a case in Firmana concerning a benefice, on June 26, 1719, before Rovault de Gemaches, the matter of the right of patronage granted to a certain Carolino de Simonetti was being considered, in these words: "That it should always and perpetually remain in his house and family, and that it should not pass to others outside the family." This son, being without offspring, granted the right of patronage to a certain Nicholas Discreto. A dispute arose between the collateral relatives of Simonetti, and the cleric presented by Nicholas Discreto, regarding whether the right of patronage was alienable or not by the family holding it. This decision was issued: "The sentence issued by the Vicar General of Fermo in favor of Dominic Carosini for the institution to the Benefice of Saint James and John, concerning the right of patronage of laymen, as presented to it by Nicholas Discreto, the patron, was challenged by Gaspar Simonetti, named by Nicholas and Raymond, his brothers, as well as by Mary Anthony and Sebastian Anthony de Simonetti."

[*Latin ed. p. 607*]

Aosta. While other patrons are asserted, and the matter having been brought before the Holy See, by virtue of the commission directly entrusted to me, I proposed today the question: to whom should the institution [to the benefice] be granted? And I received the response: it should be granted to Dominic Carosino. "For the patronage of said benefice, according to the law of its foundation, was originally divided into two equal shares, one pertaining to the family of Plateis, and the other to the lines of Lawrence,

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Christopher, and John, of the family of Simonettis; today, for the most part, it has been consolidated in Nicholas Discretus, since he, as the donor to Captain Joseph of Simonettis, holds the entire share of the family of Plateis, which share was granted to the same Captain Joseph by a donation made by Anthony, the last of the family of Plateis, to his father, Carolian of Simonettis. Furthermore, half of the other share of the family of Simonettis also pertains to him; for after the death of Bradamant of the line of John, it was restricted to the surviving lines of Christopher, namely, Lawrence, from which the aforementioned Captain Joseph was the heir to Nicholas Discretus; therefore, since Carosino maintains that he presented himself for the said benefice to the aforementioned Nicholas, who holds the greater part of the patronage, every doubt must be removed, according to the clear disposition of the text in chapter 'Quoniam de iurepatr...' Nor can it be objected that the share of the family of Plateis could not have passed to Nicholas Discretus, since the patronage for this share, in the donation made by Anthony, the last of the family of Plateis, in favor of Carolian of Simonettis, was transmitted through the lineage. For even if that quality of lineage were admitted, still the patronage in Captain Joseph of Simonettis, as a hereditary effect, could have been transferred to Nicholas Discretus, according to the well-known opinion of Ancorani, 8, 1, commonly accepted, as in the decision 667, n. 11, paragraph 18, in Granat. Capell. of 27 November 1713. And nothing prevents the response that in the aforementioned donation, not merely the effective family of Carolian was mentioned, but the entire family of Simonettis, as was previously decided by the Rota of Macerata in a decision issued in the year 1694, and it results..."

[*Latin ed. p. 608*]

608 From the decree of the Council, it was stated that this concerned the very donation of the jurist Caroliano de Simonettis; the precise words are: "so that it may always and perpetually remain in his house and family, and so that it may not come to pass that it passes to others outside of it." And therefore, this phrase should rather be understood as extended to Nicholas and Raimund de Simonettis, the surviving heirs, concerning what was presented by Gaspare; provided that those things which the Macerata Tribunal said in its decision, in a completely different case, and to which the parties had withdrawn through a settlement, are omitted. Regarding the aforementioned words of the jurist's donation, they do not in any way outweigh the consideration of the family of Simonettis in its entirety, so as to include even the collateral family, since that phrase relating to the family, without the adjective "of the family of Simonettis," restricts the disposition to the actual descendants of the donor, in whom the vow of perpetual preservation of said jurist is verified. "And this interpretation is also in conformity with the disposition of the law, according to which the designation of a family, for which someone testifies as a witness, is always

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understood as a designation of the actual family, and not of the collateral family. Furthermore, it is confirmed, both by the acceptance of the donation for oneself and one's own, and thus for the sole heirs by blood, that is, only the descendants of the donor; and also by the fact that the donor declared that he was making the donation of the jurist with a view to the services received from Caroliano, the donor, and because of the affection with which he regarded him, which further reasons suggest that the donation should not extend to the collateral family of the donor, to whom the affection of the same donor and donor did not extend. From these things, it follows that it does not at all matter that the donor made the donation so that the jurist would not pass to outsiders, unless the restriction of the jurist to the actual family of Caroliano operates, so that the donor considered all others, and even the collateral relatives, as outsiders, in such a way that neither, in the absence of the actual line, can those collateral relatives be called.

[*Latin ed. p. 609*]

AUGUSTANA 609 From this decision, it must be most carefully noted that the Holy Fathers did not adhere to the literal meaning of the words, namely that the term "family" had been used, but rather adhered to the connected and legitimate interpretations of the will of the founder or author, so that even the "contentive" family is excluded, when it lacks effective power, because the donor had received patronage for his house and family, which, in the absence of blood heirs, passes to the heirs of the family estate. Furthermore, it was considered that Nicholas Discret had made the donation because of his personal merits, which, by the intention and affection of the donor, were as if drawn to the effective family of the donor and to his heirs, and not to the contentive family. On the contrary, in our case, the Priest Due could, by no means, include his descendants in his donation and affection, but only collateral relatives, and that by reason of blood, a reason which is no less valid in descendants from males than in descendants from females. The intention of this founder is expressed in the words in which the donation was conceived; it stipulates that the "summa" be distributed "in subsidy for the children of the families of the Duc parents of the said deceased Reverend Lord." Where that word "parents" seems expressly placed to establish the laws of blood, so that they should not be excluded on account of the title of agnatic relationship and fictitious name. Indeed, among the Romans, the family, which was entirely subject to the laws of positive law, was entirely contained within the bond of agnatic kinship; but Justinian began to correct these natural injuries of law, and today, certainly in the Codes, but perhaps more so in the concept of family, it is so widely extended that it surpasses the very limits that natural blood ties impose. To this Christian concept, the Priest Due must be considered to have adhered, in that he was concerned to provide pious administrators for the religious order. If it is objected that the name "family" was distin-

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guished in the foundation records by the surname "Due" and that this has been overlooked, Volume XXXII, page CCCLXXXII, 39.

[*Latin ed. p. 610*]

610 FROM the decree of the Sacred Council, in which it is stated that those called by the testator (thus called impersonally); we respond that this interpretation is foreign to the mind, to the intention of the testator; because it would be necessary to say that those descending from women have been preferred, not those descending from men, but rather outsiders; as if those who, having called their own relatives, immediately replaced them, when those are lacking, – "the children of the families of the Commune of Tor gnon." Therefore, it seems that only the question remains as to whether, if two are present, one from the male line and one from the female line, and both are equally close in degree of kinship to the testator, whether the one descending from the male line should necessarily be preferred, as being more closely related to the testator. - In truth, if the laws of blood are considered primarily, this would seem to be asserted; but, from the subject matter, because the matter is of choosing those who will administer to the Lord in the priesthood; and no one takes honor to himself, but he who is called, as Aaron, it seems that greater weight should be given to divine vocation than to the bond of blood. However, all other things being equal, when one must be chosen over another, it does not seem that the reason of blood should be neglected; or that the male line should be preferred. I say – all other things being equal – for if one of those competing is more closely related by blood to the testator, it seems undoubtedly that assistance should be given to him; when otherwise he is worthy. Furthermore, it is also helpful to recall the decision of the Sacred Rota, published in one case, on April 13, 1728, concerning benefits pertaining to a patronal estate, in which the rule is further confirmed that the name of the family or house should be understood in the broadest sense, as long as this is consistent with the subject matter. The case concerned a *iuspatronato* established by a certain Prudentia Pace, in this way: "that one of the line of the Angelella Race, from the male side, should succeed as Rector or Chaplain, and if there is no male, then the female should succeed." Then it happened that a nephew of Prudentia contended, arguing that the male line was not constituted by descendants or by the effective line, but by other relatives, the line of support being maintained. - The Rota, correcting this,

[*Latin ed. p. 611*]

AUGUSTANA 611 observed. "Indeed, a restrictive exception would be devised if, whenever the founder in her vocation to the patronage were to use Latin terms referring to the house or family of the Paci, and specifically without the addition of pronouns – that is, 'his' or 'mine' – or without the mention of a specific heir, such cases would be understood to be limited

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to those who are of the family, whether closely related or distant, since consideration must be given to those descended from the first and common ancestor from whom all descend, and all are equally considered to be of the house and family, whether descendants or collateral relatives. – But it is different in the case where a more precise formula is used by the founder, referring to the line of a specific heir, namely, the line of Angelella Pace, whereby the vocation is restricted to the line that effectively and immediately descends from Angelella Pace, since the term 'line,' by its very nature, expresses descent and a certain succession, and cannot be extended beyond the principle from which it must be derived, nor drawn into oblique directions."

"These most wise observations are indeed of greater force in our case; for today, in common estimation, and even as civil laws prescribe and demand, women are almost equal to men in matters of inheritance, and in the opinion of all, the terms 'house' and 'family' encompass and include all, whether male or female, who are connected by a common ancestor. This is also demonstrated by the Canonicatus theologalis of July 9, 1759, before Inatta. Regarding another doubt, something must be noted; it is asked, "Whether strangers, in the absence of relatives, admitted to such assistance, can enjoy it until the completion of philosophical studies, even if, in the meantime, one of the relatives of the Sacerdote Due is admitted to the seminary and begins to engage in these studies in that case."

"To resolve this question, the examples presented by the Bishop in his recent letter are certainly most useful and of great importance, since they explain the rules of supreme equity. – But because the founding statutes of the Sacerdote Due do not expressly state such a law, in..."

[*Latin ed. p. 612*]

612 From St. Gregory, it must be determined whether this [claim] arises from a defect in the underlying matter. However, if I am not mistaken, this is not difficult to demonstrate. For the subject of the controversy is a species of donation; and indeed, in *Argumentum I. De Reg. Iuris*, it is written: "A donation is understood to be that which is granted without any compelling legal obligation," and in the title affixed to *De Donationibus* in Book III of the Decretals of Gregory IX, it is stated: "And it pertains to this [matter] to prevent conditions of the Churches from being made worse through agreements of donations." Indeed, a donation is a species of agreement which, although it originates from a cause of liberality, nevertheless, once the donor has expressly expressed his consent and the donee has accepted the donation, has the effect of obligating the donor to fulfill the accepted obligation. Therefore, an action arises in the donee against the donor, as is cautioned in § *Aliae autem* – *Institutiones* of Justinian – title *De Obligationibus* – there – "Donations, etc., even if [the things donated] are not delivered, have full and perfect validity, and the necessity of delivery

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rests upon [the donee]"; and, in *I. Si quis argentum* 35 of the same Code, title, it is granted to the donee an action against the donor to deliver the thing verbally donated. Therefore, it is established that donations cannot be revoked, as the law of the Code commands in *De Revocandis Donationibus* – there – "Generally, we declare that all donations made according to the law remain firm and unblemished," so that they cannot be revoked even by a rescript of the Prince, as is argued in 1. *Si donationem* C. ibid. "If you have done it properly, it is not necessary to rescind this by the authority of our rescript." However, some more serious statutes have established legitimate cases in which a donation can be revoked, but these cases have the nature of exceptions, and the exception confirms the law in cases not excepted. The exception is thus defined in the final chapter of this treatise by Gregory IX: "Because of his ingratitude for the liberality that has been bestowed upon him, the donor may, by the strictness of the law, revoke [the donation]; if, for example, he has dared to lay impious hands upon him, or to inflict atrocious injuries upon him, or to cause him serious damage to his property, or to endanger his life. But this applies to the donor who has remained silent, and..."

[*Latin ed. p. 613*]

AUGUSTANA 613 extends to successors. It is advisable to note that the Pontiff attributes the faculty of revoking donations to the rigor of the law; therefore, this faculty admits of the strictest interpretation and no extension from one case to another. For it is a grave injury to deprive the donee of the thing donated; therefore, if this were permitted to donors, no one would be found any longer who would accept donations. Indeed, the revocation of a donation inflicts a most serious harm, obliging someone to abandon the course of studies which he undertook with the aid of the donation. The last question, indeed, consists not in the law, but in the fact. For if philosophical studies were formerly completed in a small seminary, and the testator spoke of a small seminary, today these studies have been transferred to a larger seminary; and this circumstance, which is an addition to the facts, seems to have little or no influence on the testator's will. Furthermore, the Most Reverend Fathers will deliberate whether there has been any serious change in the supreme will of the Deceased Priest in this matter; and whether there is room for some provision or dispensation in this case. With these considerations in mind, the following questions have been proposed:

I. Whether relatives of the Deceased Priest, descending from the female line, have the right to the support bequeathed by him in this case. And the answer is affirmative.

II. Whether and in what manner these relatives have the same right in competition with those descending from the male line in this case.

III. Whether, in the absence of relatives, outsiders may be admitted to enjoy this support until the philosophical studies are completed, even if,

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meanwhile, someone from among the relatives of the Deceased Priest is admitted to the seminary and begins to undertake these studies in this case.

[*Latin ed. p. 614*]

614 FROM THE FOURTH GENERAL COUNCIL. Should assistance be granted to students duly selected, even though these are not in a small seminary, but are engaged in higher philosophical studies? RESOLUTION. The Holy Office, after deliberation on December 16, 1899, judged it fitting to respond: to I. Affirmative, insofar as suitable young men are lacking from among the natives; to II. Provided that; to III. and IV. Affirmative. ORTONE. PRIMICERIATE. December 16, 1899. By summary petitions. SUMMARY OF FACTS. The Cathedral canons of Ortone have a common endowment, and therefore equal annual revenues. Moreover, each canon possesses a specific, attached benefice; one canon's benefice is more substantial than another. Therefore, it is customary that, when one of these benefices becomes vacant (with the exception of the benefices of the Archdeacon, Penitentiary, Theologian, and Parish Priest, which are inseparable from their respective canonries), the Dean, or the canon who has held office longer in terms of possession, has the right to choose the vacant benefice. It happened that Canon Francis Bonanni held the benefice called "S. Sophia," which consisted of a fund of land covered with woods, and the revenues were very meager, amounting to approximately one hundred livres per year. But through his own industry and diligence, he increased the revenues to the point that today eight hundred livres are received. - In order that the memory of his diligence might endure eternally, and that the dignity of both the benefice and the Chapter might be increased, Bonanni, in the year 1884, petitioned the Holy Congregation that such a benefice be elevated to the rank of a Primiceriate, with the privileges that were formerly associated with it within the same Chapter, and thus be established as the second highest office after the Archdeacon. Furthermore, he requested,

[*Latin ed. p. 615*]

ORTONEN. 615, which is to be bestowed with increased benefits and privileges, should no longer be subject to the option of the senior, but should be conferred after a prior concurrence or examination. This petition was presented to the Sacred Congregation of Rites through summary requests – on December 20, 1884 – and although the Chapter, through the vote of its members, opposed the orator's request, a response was received: "For the grace, the word has been spoken with the Most Holy." The Most Holy One deigned to approve the response and grant the grace. However, the Civil Government did not approve of such a decree, since it claims the right of patronage over the Ortonen Chapter, and therefore denied the Royal Decree with the letters of concession granted to Canon Bonanni. The Primicerius Bonanni died on September 4, 1898. Today,

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Canon Dean Aloysius Veniéri implores the Most Holy Father, so that he may be granted the aforementioned dignity, with a prior dispensation from concurrence, both because he could rightfully obtain it by the law of option, had it not been elevated to the honor of Primicerius, and because for many years he has served the Church in various offices. The Bishop stated that the history of the events recounted by the petitioner is based on truth, and that it is done with the favor and decorum of the Church, and added other observations pertinent to the matter. Synoptic Discussion. As is clearly evident, the orator's insistence does not contradict common law, but rather a particular law, which the Sacred Congregation of Rites deemed it appropriate to establish. However, upon closer examination, this particular law, at least with regard to its intention, does not seem to greatly impede the clemency and humanity of the Most Holy Fathers from approving the orator's wishes. Indeed, the rescript of December 20, 1884, granted two favors, namely, it elevated the aforementioned prebend from the rank of Canon to the rank of Primicerius; and furthermore, it stipulated "that this canonry, in the event of a vacancy, shall be subject to concurrence or examination, with the always-pleasing consent of the Superior for the time being." In this rescript, the first part seems to be the more important, and it will remain in force forever, due to the increased rank.

[*Latin ed. p. 616*]

€16 EX s. C. CONCILII canonicatus a S. Sophia. - Altera vera pars, ex ipso tenore precum quibus rescribere placuit BE'. P. P., videtur magis obnoxia prudenti arbitrio collatoris, quam certae legi. Nam ea verba « a beneplacito semper dei Superiore » quamvis se directe referant ad diversam formam aut concursus aut examinis, nihilominus denotant in una et alia ratione plurimum deferri prudenti arbitrio Superioris. Siquidem hoc expostulabat subiecta materia. Insuetum est constitutionibus capitularibus, ad primas dignitates viam patere per concursum: quum inde fieri possit ut clericus omnibus capitularibus iunior, ad examina tamen paratior et instruc tor ob recens emensum curriculum studiorum, quamvis ceteris neque doctior, neque prudentior, pertingere facile valeat ad primos locos in Capitulo Cathedrali. Quamobrem pro suo arbitrio Superior vi rescripti, potest concursui substituere examen; seu potius quam indicere concursum potest aliquem vocare eumdemque examini subiicere, ut ei conferat canonicatum, si dignum reperiat. Examinis autem forma, aeque remissa arbitrio Superioris, facile contineri valet in his terminis, ut respondeat ingenio viri vel aetate provectioris: nec non rationem habeat potissimam documentorum, quibus virtus et merita Sacerdotum comprobantur. Ceterum quia nunc, prima vice, inchoanda est praxis quae sane in posterum revocabitur ad exemplum; cum semper Decani Capituli, vacante Primiceriatu, optionis ius sibi arrogabunt vel saltem in medium afferent: non parvum facessit

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negotium, eam sequi viam, et rescripti intentioni magis consentaneam et bono Capituli accommodata, pro nunc et in posterum. Hisce animadversis, quaesitum fuit quomodo essent preces dimittendae. RESOLUTIO. Sacra C. C. re discussa sub die 16 Decembris 1899 censuit respondere: Juxta petita, praevio* tamen examine, arbitrio et conscientia Ordinarii.

[*Latin ed. p. 617*]

617 VERONA. A dispensation was granted on April 7, 1900, from an irregularity, due to a physical defect. Through summary petition. The cleric Attilius Cecco, of the diocese of Verona, submitted a petition requesting that he be benignly dispensed from a certain irregularity, namely, "a defect of the body." The petition, which was transmitted to the Holy Sacred Congregation on February 6, 1900, was explained and recommended by the Ordinary. "The cleric Cecco Attilio, of this diocese, some years ago was afflicted with a fungal synovitis in his left knee, which, having degenerated into a true ankylosis, produced a permanent inflexibility of the aforementioned knee. Having been subjected to a special examination, it was observed that he can very well stand and move without the need of support. However, when kneeling, he must bend forward the right knee and extend the left leg backward, thus achieving only a half-kneeling position. As for kneeling completely, he cannot do so if there is only one step; but if there are at least two steps, or at least if there is a support in front, he can bend the aforementioned knee to the ground, keeping the left leg extended backward." "For this reason, I humbly appeal to Your Eminence, beseeching you to grant him a dispensation from the irregularity due to a defect of the body, as the aforementioned cleric, already invested with the Minor Orders, desires to receive the Subdiaconate and then the other Major Orders." "I observe that the aforementioned petitioner is already 27 years of age; he is about to complete the last year of his theological studies, and he distinguishes himself by piety, morality, and progress in his studies. Therefore, it is to be hoped that he will become an excellent priest, very useful to the Church, and in particular to the diocese of Verona, which is in need of good and virtuous priests." COMPENDIUM OF THE FACTS.

[*Latin ed. p. 618*]

618 FROM THE DECREE OF THE HOLY CONGREGATION, A SYNOPTIC DISCUSSION ON WHETHER A DISPENSATION SHOULD BE GRANTED. The matter under consideration concerns a true irregularity due to a bodily defect, which cannot be doubted. For irregularity is always present when the ceremonies of the Holy Mass cannot be performed without neglecting the sacred rites and exciting the admiration of the people; indeed, chapter 2 concerning infirm clerics states that an irregularity is present "because we cannot confidently hope that this can be done either without causing concern due to weakness, or without causing scandal due

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to the deformity of the member." For this reason, the Holy Congregation has not once denied a dispensation, or has only permitted the celebration in a private chapel or at a time when there is less frequent attendance, as in Abellinen: the irregularity of July 28, 1770, was confirmed on May 4, 1774, and in Cerenzia on May 28, 1788. This severity seems all the more urgent in our case, since it concerns a cleric being promoted, whereas the Holy Congregation is usually less inclined to grant a dispensation in such cases.

A DISPENSATION SEEMS ADVISABLE. However, it is advisable to note that there are examples, perhaps of a more severe nature, in which a dispensation was granted to clerics being promoted, especially when the cleric possesses good morals, the recommendation of his bishop, and the hope of benefit to the Church from the cleric's promotion. Thus, in Catanzaro on December 17, 1859, a dispensation was granted to Father Scalzo, whom the bishop described as being so impaired in his legs that he could only kneel at the lowest step of the altar with the help of a hand placed on the shoulder of an assistant. And in Ascoli on February 20, 1808, the Holy Congregation acted with similar benevolence towards the cleric Salustri, who, due to a weakness in his kidney, limped and could barely indicate his genuflection with his left knee; and he could not bend his right knee, or either knee simultaneously, without the help of another. And in this case, it concerned a cleric being promoted. Furthermore, in Comacchio on February 27, 1864, according to a rescript, a certain Fogli received a dispensation, who (as it is written in the documents) "suffered from a complete ankylosis in his right knee, and could not..."

[*Latin ed. p. 619*]

"YERONEN. 619, to bend down to the ground, but only in the middle, so to speak, in order to conveniently perform the genuflection." And in the matter under consideration, there was also a cleric who had only received two of the minor orders. Finally, in this case, it seems that greater leniency should be exercised, especially since the good character of the cleric has been highly commended by the Bishop, and the Ordinary hopes to derive benefit from it for the Church. Nor should it be overlooked that, since the cleric has already completed his ecclesiastical studies and has now reached the age of 27, the denial of the grace of dispensation would seem even more harsh from this point of view, since it would be more difficult for him in the future to pursue another path or to dedicate himself to other studies, lest he remain an idle man, or be permanently attached to a new status in social intercourse. Considering these points, the question was raised as to what response should be given in prayer. RESOLUTION. The Sacred Congregation, after deliberation on April 7, 1900, decided to respond: "Regarding the request for a dispensation, made with the words 'Ex S. CONGR. EPISC. ET REGULARIUM ROMANA CREDITI' on September 15, 1899." COMPENDIUMPACTI. The Brothers Bianchetti, merchants of

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Locarno in Switzerland, deposited in the year 1892 a quantity of goods for the manufacture of fabrics in the premises of the Seminary of St. Pius in the City. And the sale of these goods was entrusted to some of the students, with the consent of the Rector of the Seminary. In the year 1895.

[*Latin ed. p. 620*]

620 FROM S. G. BISHOPS AND REGULARS: With reasons given and received, the society commonly known as "Ditta Bianchetti," a creditor, remained indebted for several thousand livres. The Seminary stated before the Sacred Congregation of Bishops and Regulars that it wished to be compensated. The cause was presented on July 1, 1898, under the following question: By what means and in what manner ought the Brothers Bianchetti, merchants of cloth in Switzerland, to be compensated in this case? And the Reverend Fathers, having considered the matter, responded as follows: Negatively, in all respects. The discussion of this cause has already been related in volume 3, page 304. Against this decision, the plaintiffs, the Brothers Bianchetti, protested and obtained the benefit of a new hearing through the decree "Reproponatur." However, since they have now reached an agreement with the students Di Cecco and Cerroni, who declared that they would answer for their respective shares, the Brothers Bianchetti are now limiting their action to the sum of 600 livres, which they claim is owed to them by the Rector of the Seminary at that time, Reverend Father D. Canestrari.

Synopsis of the Argument. The Brothers Bianchetti, in addition to the arguments presented in the initial presentation of the cause, claim that the obligation arises from the actions of Rector Canestrari, based on the following articles of the Italian Civil Code. In article 1151, it is stated: "Whatever a man does to another which is harmful, obligates him, from whose fault it occurred, to compensate for the damage." Also, in article 1152: "Everyone is bound to answer for the damage caused not only by his own act, but also by his own negligence or imprudence." And finally, in article 1153: "Everyone is likewise bound to answer not only for the damage caused by his own act, but also for the damage caused by the act of others for whom he is responsible, or by things which he has in custody." The date and its defect are held liable for damages in favor of the Brothers Bianchetti.

[*Latin ed. p. 621*]

ROMANA 621: concerning damages caused by minor children living with them; concerning damages caused by the actions of their servants living with them; concerning damages caused by their domestic servants and employees in the performance of their duties. Teachers and artisans are liable for damages caused by their students and apprentices, during the time they are under their supervision. This obligation ceases when the parents, guardians, teachers, and artisans prove that they could not have

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prevented the act for which they are required to answer. However, the brothers Bianchetti state that the damage they suffered was caused by the actions of students residing in the Seminary, for whom regular payments were made with the license and consent of the former Rector, Canestrari. Therefore, he is obligated to compensate for the damage, according to the aforementioned articles, according to which someone can be held liable not only for damage caused by their own negligence, but also for damage caused by persons placed under their supervision. For a fuller understanding of this matter, the esteemed lawyer Summula has added several observations from his office, which it is worthwhile to summarize briefly. The plaintiffs, Bianchetti, in order to prove their intention, appeal to the theory of obligation arising from the act of another, as derived from the aforementioned articles of the Italian Code. Indeed, it cannot be doubted that, according to the text of chapter 1 of the new work on the announcement and doctrine of Benedict XIV on diocesan synods, book 9, chapter 14, where the law is silent, recourse must be had to the provisions of civil law: this is excellently explained by the esteemed D'Annibale in his Summula Theol. Mor. I. 201: that what is lacking in canon law is supplemented by civil law, not indeed by that Roman law which formerly prevailed, but by that which now prevails, unless it is a matter of those laws which have been transferred into canon law, since they are no longer laws, but canons. With this premise, the obligation arising from the act of another can be conceived in two ways: namely, through negligence in choosing and through negligence in supervising. Roman legislation, according to the praetorian law, presumed negligence in cases of damage caused by the act of another in only two cases, namely, in the case of the head of the family concerning matters...

[*Latin ed. p. 622*]

622 From the decrees of the Council of Trent, the canons of the Church, and the regulations, concerning the age of majority, the domicile, and the responsibility of the owner of a vessel, a house, a stable, or other property for damages caused by those dependent upon them, in matters concerning the goods of travelers, and the responsibility of the head of a household for the misdeeds of his dependents, according to law 6 § 2 and law 1 of book 9, title 3 of the Digest of Voet, in the Pandects, book 14, title 3, 4. Besides these two cases in ancient Roman law, there were actions against the head of the family and the owner for damages caused by their children and servants. Later, with the changing conditions of society, these actions were abolished; but modern legal systems have considered it most equitable, in certain cases, to admit legal presumptions of guilt against certain individuals, due to their failure, either in selecting or in supervising their dependents. These presumptions are of two categories: simple legal presumptions, and presumptions of law, which reject proof to the contrary.

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These presumptions are strict, and cannot be extended beyond the cases expressly stated by law. But, besides the cases designated by law, there may be other cases that have some analogy and similarity with them: in these cases, the judge is not prevented from admitting or presuming guilt based on the actions of another, and this presumption is called a presumption of human action. This doctrine is based on the principle that, in order for someone to be held liable for damage caused by the actions of another, it is sufficient that they should have been able to prevent it and did not do so, or that they provided passive cooperation, as taught by Giorgi in his book *De Obligationibus*, § 251, and demonstrated by examples. Among the cases designated by the Italian Civil Code in which a legal presumption of guilt can be rebutted by contrary evidence, is the case of teachers and masters, article 1153, with respect to damages caused by their dependents. Indeed, the learned agree that the term "teacher" is not only understood to mean a simple master or instructor in an art or doctrine, but also one to whom the education of students has been entrusted, because, in this respect, he substitutes the authority of the father. Therefore, considering the aforementioned principles of law, it seems that the Rectors of *Semina*…

[*Latin ed. p. 623*]

ROMANA 623: The aforementioned paragraph of Article 1153 of the Italian Code can be applied to the situation. For these individuals are vigilant concerning the education of their students and represent paternal authority; therefore, they can be held liable for the actions of their dependents, except in the case where they prove that they were unable to prevent the culpable act. Regarding this legal theory, the Brothers Bianchetti maintain that the Rector Canestrari is liable for the damages incurred due to the fault of certain students of the Seminary of St. Pius.

FAVORE EX-RECTORIS CANESTRARI. B: In contrast, the defense argues that the former Rector Canestrari, by permitting the Brothers Bianchetti to deposit fabric within the premises of the Seminary for the purpose of making garments, did not intend to assume any obligation towards them, but rather, only granted permission to one of the Prefects of the Institute, who was already a priest, to receive the deposit of goods from the Brothers Bianchetti, and in no way appointed them as his representatives in this matter. Furthermore, the defense asserts that there is no evidence of any obligation on the part of the former Rector, either oral or written, nor can it be proven by any equivalent means. It is true, the Brothers Bianchetti, in dealing with the aforementioned student, believed they were dealing with the Seminary's economist, but since such a person was never designated by Canestrari, the defense argues that the Brothers Bianchetti must bear responsibility if they were mistaken in this regard; this is all the more true, since the former Rector Canestrari had no postal correspondence with the aforementioned Bianchetti or their

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representative, and no accounting was ever requested from him, nor was any recourse offered.

Regarding the objection to Article 1153 of the Italian Civil Code, the defense responds to the former Rector Canestrari that it cannot be applied in this case, since the aforementioned article speaks of obligations arising from delicts or quasi-delicts, as is evident from the heading of Section 2, Title 4, of Book 3 of the cited Code. Furthermore, it is known that, in order to establish an obligation of the strictest law, as this case should be considered according to the defense, perfect and conclusive proof is required, and not merely ideal and ambiguous evidence, as taught by Cardinal De.

[*Latin ed. p. 624*]

624 FROM THE ACTS OF THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS, concerning a judgment in Lucca, Book 2, Numbers 17 and 18, and with further corroborating evidence, the cause in favor of that which is in doubt has prevailed. The defender concludes his argument by noting that the former Rector, Canestrari, left the Seminary on April 1, 1896, and that from a letter from the student Bargagnati (which was presented in the initial proposition of the case), it is clear that both he and the student Cerroni, having dealings with the Brothers Bianchetti, were present in the Seminary that same year; therefore, they ought to answer for the remaining debt. After considering both sides, the following question was to be resolved: Whether the Reverend Father D. Canestrari, former Rector of the Pontifical Seminary of Pius, is obligated to pay to the Brothers Bianchetti the requested sum of 600 lire in this case.

RESOLUTION. The Holy Congregation of Bishops and Regular Canons, after mature deliberation, responded on September 15, 1899: "Considering that it is supremely fitting that the Signori Bianchetti should not lose the sum due to them and claimed by them, We invite the Most Reverend Cardinal Vicar to institute a thorough investigation into the matter, in order to determine to which of the students of the Seminary of Pius the obligation falls to compensate for the claimed sum, and to communicate to His Eminence all the necessary and appropriate powers to summon before the officialdom of his Vicariate even priests from other dioceses."

[*Latin ed. p. 625*]

625 FROM THE HOLY CONGREGATION FOR THE RITES OF CHINA, concerning the Beatification, or declaration of martyrdom, of the Venerable Servant of God, John of Triora, a priest of the Order of Friars Minor of Saint Francis. CONCERNING THE DOUBT: Whether it is established that there was martyrdom, the cause of the martyrdom, and the signs or miracles in the case and to the effect of which we are speaking. The invincible army of martyrs, which, amidst the raging persecution in China and neighboring regions, at the beginning of this century, gave witness to Christ with their

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blood, does not lack in the glory of the Italian name, exhibiting an apostolic man who did not hesitate to "give his life for his sheep," according to the words of the Lord: "I am the good shepherd. The good shepherd giveth his life for his sheep." This illustrious ornament of the Order of Friars Minor, of the Religion and Society so highly esteemed, was the Venerable John Lantrua, called of Triora, from his native town in Liguria. At the age of seventeen, he was chosen among the Friars Minor of Saint Francis of Assisi, and, having completed a course of studies, he devoted himself entirely to the apostolic ministry. Having been approved for his prudence, he was appointed to govern the monastery of Veliterno; and, while eager to undertake sacred missions, he obtained from the Holy Council, for the propagation of the Christian name, permission to go to China. Therefore, in the year 1798, departing from Rome, he traveled to Lisbon, in order to set sail for the regions of China. However, having found no opportunity to navigate to those places, he remained in that city for a year; after which, after various hardships, he arrived at Macao. From there, he went to China, to the province of Hunan, which regions he traversed, not discouraged by labors, nor deterred by dangers, bringing many from the pagan population to Christ, and stirring up and confirming many Christians who were lukewarm in their faith. At that time, the edicts against the Christian name were very severe; and, consequently, the authorities sought with greater zeal to capture a certain agitator, who, with his companions, was disturbing that province. Amidst these things, John, with his usual courage and readiness for all things, [followed by missing text].

[*Latin ed. p. 626*]

626 From the Sacred Congregation for the Propagation of the Faith, having been less careful in his life, he did not escape the malice of informers, and was brought to justice under the charge that he had violated the laws and disobeyed the imperial decrees. However, the valiant soldier did not consider abandoning his post, especially since there was no one else in that vast province who was a priest. Therefore, acting as a follower of the Christian name, they forcibly seized the sacred building, which the Venerable Servant of God had constructed, set it on fire, and carried away all the sacred furnishings, as a sign and proof of the asserted and propagated religion, to the Prefect of the city of Lui-jan-sien. When questioned, John, standing firm, gave answers worthy of the language of the ancient martyrs; until, bound in chains, he was sent to the city of Heu-cou-fou. On this journey, his singular charity was revealed to the others who were being held captive with him, for whom he obtained that they be carried in litters. Then, having been brought to the city of Cian-sa, the capital of the province, he spent nearly seven months in a prison that was exceedingly harsh: his neck, hands, and feet were bound with iron chains, and he was forcibly stretched upon the Cross, so that he might trample upon it. Finally, when

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the constancy of this most valiant athlete had not been broken by any adverse attempts, a capital sentence was passed upon him. On the day that he arrived at the place of execution, he requested a space for prayer. Then, for the sake of the Christians of China, he prostrated himself before God for the fifth time, so that all who were present might understand that he was publicly professing his faith in life. When the garments of the condemned were about to be taken away according to the law, concerned more about modesty than about the imminent death, he offered a small sum of money, asking that he not be stripped of his inner garments. Having scarcely obtained this, he turned to the informers and ordered them to do as they were commanded; and, being bound to the fatal machine, he passed away to heaven on the 7th day of February, in the year 1816, by the noose around his throat. The glorious fame of this martyrdom was widely spread, and proper investigations were instituted, which were diligently conducted by the Sacred Congregation for the Propagation of the Faith, and the Supreme Pontiff Gregory XVI signed the commission for the introduction of the cause with his own hand. Our Holy Lord Leo XIII, by a decree dated the eleventh day before the Kalends of February of the following year, graciously granted that the doubt concerning his martyrdom, the cause of his martyrdom, and the signs or miracles that confirm the martyrdom itself, be presented to the particular Congregation of the Sacred Congregation for the Propagation of the Faith, with a vote from the official prelates of the aforementioned Congregation. Therefore, in the assembly at Vatican,

[*Latin ed. p. 627*]

From the Sacred Congregation for Rites, number 627, dated the sixth day before the Ides of the month, concerning the doubt proposed by the Most Reverend Cardinal Caietano Aloisi Masella, Relator of the Cause: "Whether it is established that there is martyrdom, the cause of martyrdom, signs, or miracles, in the case and to the extent of which we are speaking"; the Most Reverend Cardinals and Officials, after due deliberation, judged that it is established. However, the Most Holy Lord, after hearing from the Secretary of the Sacred Congregation a report on all matters, refrained from judgment and postponed the matter to another day, so that He might more earnestly seek the grace of opportune counsel from the Father of Lights. On this day, the Virgin Most Holy, greeted by the Angel, the Most Holy Lord, having devoutly recited the prayers in the sacred domestic chapel, summoned to Himself in the more noble hall at the Vatican, the Most Reverend Cardinal Camillo Mazzella, Bishop of Preneste, Prefect of the Sacred Congregation, and the Most Reverend Cardinal Caietano Aloisi-Masella, Relator of the Cause, and also John Baptist Lugari, Promoter of the Sacred Faith, and myself, as noted below, along with others present, and solemnly and duly declared: "Thus it is established that there is martyrdom and the cause of martyrdom, and signs or miracles of the

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Venerable Servant of God, John of Triora, so that the process may proceed to further stages." This decree was ordered to be published and inserted into the Acts of the Sacred Congregation for Rites on the eighth day before the Kalends of April, in the year 1900.

C. CARD. MAZZELLA, Prefect of the Sacred Congregation.

L. S. S. DIOMEDES PANICI, Secretary of the Sacred Congregation.

VICEN. Doubts concerning Masses offered for the repose of the soul.

To resolve a certain controversy concerning the interpretation of the decrees 3903, issued on August 8, 1896, and 3944, issued on January 12, 1897, concerning Masses offered for the repose of the soul, the present Master of Ceremonies of the Cathedral Basilica of Vich, in Spain, with the consent of his Most Reverend Bishop, humbly presented the following doubts to the Sacred Congregation for Rites:

[*Latin ed. p. 628*]

628 FROM THE SACRED CONGREGATION OF RITES, I. Whether, from the aforementioned decrees of the Mass, which are recited by priests in churches and oratories of the city for the deceased, whose body has been buried or interred not more than two days from the day of death or deposition, they can be celebrated for the repose of the soul, provided that the funeral is held in the parish church with a funeral Mass; whether this privilege belongs only to the church in which the funeral is held with its funeral Mass? II. Whether any priest can celebrate only one Mass for the repose of the soul, or more, on different days, provided that the body is buried not more than two days? III. Whether, for the deceased who resided in the city and died outside the city, the aforementioned recited Masses for the repose of the soul can also be celebrated in the same city? IV. How should the physical or moral presence required in the aforementioned decrees be understood? And the Sacred Congregation, after considering the report of the undersigned Secretary, and with the careful opinion of the Liturgical Commission, decided to respond as follows: To I. Negatively to the first part, affirmatively to the second. To II. Let the Decrees stand. To III. and IV. As provided in the foregoing; and private Masses for the repose of the soul are permitted only in a public church or oratory where a funeral with a funeral Mass is held: in private oratories, however, Masses that are permitted to be recited there can be for the repose of the soul, provided that the body is present in the house; with all other clauses and conditions observed. And thus it responded. On April 3, 1900. C. CARD. ALOISI-MASELLA, Pro-Datary of the Sacred Roman Congregation, Pro-Prefect of Liturgy. >$(S.. DIOMBDES PANICI, R.C., Secretary.

[*Latin ed. p. 629*]

FROM THE SACRED RITUALS, 629, VICENSIS. Doubts regarding the choral habit of the Master of Ceremonies. The present Master of

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Ceremonies of the Cathedral Basilica of Vicensis in Hispania, with the prior consent of his Most Reverend Bishop, has reverently presented the following matters to the Congregation of Sacred Rites for appropriate declaration: When the aforementioned cleric received possession of the benefice to which the office of Master of Ceremonies is attached, a custom prevailed in the Cathedral Basilica of Vicensis, according to which the Master of Ceremonies used the choral habit, or the habit proper to his benefice, when performing his duties as a celebrant. This custom was discontinued according to decree 3840 of Granada, dated December 14, 1894, and another practice was introduced with the consent of the Most Reverend Chapter of the same Cathedral Basilica; namely: the Master of Ceremonies wears a violet vestment with a surplice, whenever he performs his office, whether at the altar or in the choir, except in cases in which Vespers, the Te Deum, and Lauds are solemnly sung only in the same Basilica, so that he himself should not have to leave the choir at the beginning of Compline and at the end of Matins in order to change his vestment. With these matters established, the aforementioned cleric, in order that the aforementioned practice may be in accordance with the Ceremonial of Bishops and Decrees, inquired: I. Whether the Master of Ceremonies must wear the violet vestment in pontifical functions, whether in the Cathedral or outside of it, but within his own diocese? II. Whether he may also wear the same vestment in pontifical functions celebrated by another Bishop, with the consent of the Ordinary of the diocese? III. Whether he may or must wear such a vestment when he celebrates a Chapter of the Cathedral, whether in the Basilica itself or outside of it, both when the Bishop is present and when he is absent? IV. Whether he may also wear the same vestment at solemn Vespers, Compline, Matins, and Lauds? V. What habit he must wear when only Vespers, the Te Deum, and Lauds are solemnly sung; and whether he must leave the choir at an appropriate time to change his habit? And the Sacred Congregation, after consideration by the undersigned Secretary, and after a careful vote of the Liturgical Commission, decided that the following should be answered: To I. Affirmative.

[*Latin ed. p. 630*]

630 FROM THE SACRED CONGREGATION OF RITUAL: Regarding the matter, it is affirmative, if a chapter of the Cathedral Church is present. Regarding III, the decrees of Aquilana of January 22nd, in the year 1831, and of the Dubia of September 17th, 1822, number 12, are to be observed. Regarding IV, it is affirmative, but according to the norms of the aforementioned decrees, as explained in doubt III. Regarding V. As for the first part, provision is made in the foregoing. As for the second part, the established practice can be maintained, especially in the basilicas of the city. And thus, it was written, on April 3rd, 1900. C. CARD. ALOISI-MASELLA, Pro-

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Datary of the Sacred Roman Congregation. Pro-Prefect. * S. DIOMEDES PANICI, Sacred Roman Congregation, Secretary. DECREE concerning the scapular properly called that of the Sacred Heart of Jesus. RITES AND FORMULA OF BLESSING AND SACRED IMPOSITION OF THE SCAPULAR OF THE SACRED HEART OF JESUS. He who receives the Scapular of the Sacred Heart of Jesus shall kneel, and the priest, endowed with apostolic authority, wearing the white stole and with his head uncovered, shall say:

f. Aid us in the name of the Lord.

R. Who made heaven and earth.

f. Show us, O Lord, Thy mercy.

R. And grant us Thy salvation.

f. O Lord, hear my prayer.

4. And let my supplication come to Thee.

f. The Lord be with you.

R. And with thy spirit.

[*Latin ed. p. 631*]

FROM THE SACRED RITUAL, 631: LET US PRAY. O Lord Jesus, who, through the singular benefit of your most profound love, have opened to your Church, your bride, the ineffable riches of your Heart: deign to bless this scapular, adorned with the emblem of that same Heart; so that whoever devoutly wears it, through the intercession of the Blessed and Most Gentle Mary, your Mother, may deserve to be enriched with heavenly virtues and graces: Who live and reign, etc. Afterwards, the priest sprinkles the scapular with holy water and places it upon [the person], saying: Receive, brother, this scapular of the Sacred Heart of Jesus, so that, adorned with it, in honor and memory of his love and passion, through the intercession of the Blessed Virgin Mary, Mother of Mercy, you may deserve to attain the fullness of divine grace and the fruit of eternal glory. Through the same Christ our Lord (1). Then, once, with the accompanying words, whether in Latin or the vernacular language, he says the following prayers: Jesus, meek and humble of heart, make our hearts like unto your own. Mary, Mother of Grace, Mother of Mercy, protect us from the enemy, and receive us at the hour of death. DECREE: That the charity of God, diffused through the Holy Spirit, may constantly remain and reign in the hearts of men, the divine sacraments and religious observances wonderfully contribute. Among these, the solemnity instituted by the Church in honor of the Sacred Heart of Jesus should be promoted, through which not only is the Heart of the Son of God and of man to be adored and glorified, but also the memory of that divine love is symbolically renewed, by which the same Only-Begotten Son of God assumed human nature, and, becoming obedient even unto death, offered to men an example of virtues, and showed himself meek and humble of heart. Truly, (1) If the scapular is

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placed upon a woman, say: Receive, sister, etc. If upon several people, then all should be said in the plural number.

[*Latin ed. p. 632*]

632 From the Sacred Congregation of Rites, the piety of the faithful has introduced other methods by which devotion to the Most Sacred Heart of Jesus is propagated with joyful and abundant fruit. Among many faithful, the pious and praiseworthy custom of wearing upon the breast an emblem of the Most Sacred Heart of Jesus, like a scapular, has flourished and continues to flourish, a custom which originated with the Blessed Margaret Alacoque, illuminated by a certain heavenly light, and which has been enriched by partial indulgences from the Apostolic See. Now, as a similar devotion is fostered and increases daily, especially in Gallus and neighboring regions, humble and fervent prayers were offered to His Most Holy Father Leo XIII, that for the greater propagation and glory of the Kingdom of Christ and of His divine love, he might deign to approve the so-called scapular of the Sacred Heart of Jesus, with the proper rite and formula of blessing and imposition. This scapular is made of two pieces of woolen cloth of white color, joined by a double cord, one of which bears the emblem of the Sacred Heart of Jesus, as is commonly painted, while the other bears the image of the Blessed Virgin Mary under the title Mother of Mercy. Furthermore, His Holiness, constantly receiving such prayers, after consultation with the Congregation of Sacred Rites, has deigned to approve the scapular described above, to be blessed and imposed with the rite and formula that precede this decree, only for those to whom the Apostolic See has granted the faculty. Contrary to all that may oppose. April 4, 1900. C. CARD. ALOISI-MASELLA, Pro-Datary of the Sacred Rites Congregation. S. DIOMEDES PANICI, Secretary of the Sacred Rites Congregation.

[*Latin ed. p. 633*]

653 FROM THE SACRED CONSTITUTION OF RITES concerning the scapular of the Most Sacred Heart of Jesus in agony, and the most beloved Heart of Mary, sorrowful. RITES AND FORMULA OF BENEDICTION OF THE SCAPULAR OF THE HOLY HEARTS OF JESUS AND MARY. He who desires to receive the scapular of the Holy Hearts of Jesus and Mary, kneeling, and the Priest, endowed with apostolic authority; wearing the white stole, with his head uncovered, says: V. Help us in the name of the Lord. R. Who made heaven and earth. V. Show us, O Lord, your mercy. R. And give us your salvation. V. O Lord, hear my prayer. R. And let my supplication come to you. V. The Lord be with you. R. And with your spirit. LET US PRAY. Most merciful God, who, for the salvation of sinners and as a refuge for the wretched, willed that the Heart of your Son Jesus Christ be filled with charity and mercy, and that the Heart of the Blessed Virgin Mary be similar to it, deign to bless this scapular to be worn in honor

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and memory of those same Holy Hearts, that this servant, clothed in the merits and intercession of the same most holy Virgin, may deserve to be found worthy in the Heart of Jesus. Through the same Christ our Lord. Amen. Afterwards, the Priest sprinkles the scapular with holy water and places it upon [the person], saying: Receive, Brother, the scapular of the Holy Hearts of Jesus and Mary, that under their protection and custody, by remembering and imitating the virtues of both Most Sacred Hearts, you may become worthy of the glory of the resurrection. Through the same Christ our Lord. Amen. (1) If the scapular is placed upon a woman, say: this handmaid, etc. Receive, Sister, etc. If it is given to many, then all should be said in the plural number.

[*Latin ed. p. 634*]

654 FROM THE SACRED CONGREGATION. Then, on one occasion, along with the attached [text], recite, either in Latin or in the vernacular language, the following ejaculatory prayers: Most Sacred Heart of Jesus, have mercy on us. Immaculate Heart of Mary, pray for us. DECREE. Since, at this time, through the acts of the Congregation of Sacred Rites, the Most Holy Lord, Our Pope Leo XIII, has striven to excite and inflame the hearts of the faithful more and more towards the worship and piety of the Divine Heart of Jesus and the Most Pure Heart of the Virgin Mary, the Most Reverend Lord, John Louis Robert, Bishop of Marseilles, considered it an opportune and useful time to approach the Blessed Father and earnestly to request that he would deign to approve a special rite and formula for blessing and bestowing the scapular of the same Sacred Heart of Jesus, as well as the sorrowful Heart of Mary. This scapular, which has long been used by the faithful in private devotion, consists of two parts made of white wool, joined together by a cord or ribbon; one part bears the emblems of the two hearts, namely, the Heart of Jesus adorned with the symbols with which it is usually represented, and the Immaculate Mother Mary pierced by a sword, with both instruments placed beneath the image of the Passion of the Lord; the other part displays the Holy Cross made of red cloth. Furthermore, His Holiness, with the exquisite judgment of the Sacred Congregation of Rites, has deigned to approve the aforementioned scapular, along with the proper rite and formula for blessing and bestowing it, to be used only by those priests to whom permission has been granted by the Apostolic See. Notwithstanding any objections. April 4, 1900. C. CARD. ALOISI-MASELLA, Pro-Datary of the Sacred Congregation. Pro-Prefect. L. © S. DIOMEDES PANICI, S. R. C., Secretary.

[*Latin ed. p. 635*]

FROM the Sacred Ritual, section 635, of the Order of Friars Minor of St. Francis. Doubts proposed by the editor of the calendar of the aforementioned Order.

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ORDER OF FRIARS MINOR OF ST. FRANCIS.

Reverend Father Marianus Méndez, a priest of the Order of Friars Minor, who has the task of preparing the calendar, or directory, for the performance of the Divine Office in the Province of St. Gregory the Great in Hispania, humbly prostrates himself before Your Holiness and reverently presents the following doubts for resolution:

Pope Pius IX, of blessed memory, in the decree *Ab expositis*, published on April 29, 1858, commanded that all Religious of the Minorite family should strictly conform to the general calendar permanently printed by order in the year 1857, omitting all other diocesan offices, except those of the principal patron of the place, the titular saint, and the dedication of the cathedral church, to be celebrated according to the rites prescribed by the rubrics and decrees for Regulars, as well as other particular offices granted by the Holy See to both clergy.

Furthermore, according to the authors who treat of the liturgy, and the Decree of the Sacred Congregation of April 28, 1866, in Patavina, 4, Regulars are obligated to recite the office for all diocesan feasts which are accompanied by the obligation to hear Mass and abstain from servile works.

Moreover, the Friars Minor of the Province of St. Gregory the Great in Hispania have long since recited the office for the principal patron of the place, whose feast day is not a feast day for the people, according to the double rite of the first class, without an octave; however, according to the same authors and the decrees of the Sacred Congregation, as in the Calendar, number 1095, of September 28, it is not permitted for those places that have a canonically elected patron to recite the office for the patron of the diocese; therefore, the question is:

I. Are the aforementioned Friars Minor obligated to recite the office for the patron of the diocese, whose feast day is by order a feast day throughout the entire diocese, according to the rite prescribed for Regulars, of the double class, without an octave; or should they omit it, because it is not expressly mentioned in the aforementioned decree *Ab expositis*, and because, as has been said, they already recite the office for the principal patron of the place?

Furthermore, the Religious of the aforementioned Province have, from time immemorial, the custom of not reciting the office for the titular saint of the cathedral; therefore, the question is:

II. Are they able to continue this custom; or rather, should they recite the office for the titular saint of the cathedral?

[*Latin ed. p. 636*]

According to the regulations of the Rituale Romanum, section 636, as prescribed for Regular Canons, namely, a Mass of the first class without an octave? Furthermore: The rubrics of the Missal and authors who treat of

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the liturgy do not explicitly state whether the aforementioned Mass must immediately follow the canonical Hour designated by the rubrics themselves, or whether it is permissible to separate the stated Mass from the canonical Hour, so that some interval of time, be it brief or lengthy, may intervene between the Mass and the Hour; hence, the question: III. Whether the conventual Mass must be celebrated immediately after the canonical Hour designated by the rubrics and decrees; or whether it is permissible to separate them, so that some interval of time, be it brief or lengthy, may intervene between them? And, in the affirmative regarding the first part, the question is asked: IV. Whether the same holds true for a solemn or chanted Mass which is not conformed to the office of the day, when it is prescribed in the rubrics and decrees that it be celebrated after a certain canonical Hour? And the Sacred Congregation, after carefully considering the report of the undersigned Secretary, and the unanimous opinion of the Liturgical Commission, decided to respond as follows: Regarding I: Affirmative regarding the first part, negative regarding the second. Regarding II: Negative regarding the first part, affirmative regarding the second. Regarding III: Affirmative regarding the first part, negative regarding the second. Regarding IV: Negative, and it should be celebrated after None. And thus it was written, on the 9th of April, 1900. C. CARD. ALOISI-MASELLA, Pro-Datary of the Holy Roman Church, Pro-Prefect of L. R. C. S. DIOMEDES PANICI, Secretary of the Holy Roman Church.

[*Latin ed. p. 637*]

637 FROM THE APOSTOLIC PENITENTIARY DECREE FOR THE JUBILEE YEAR, concerning the final work prescribed. In the "Excerpts from the Constitutions of Benedict XIV" under number XIV, it is read: "If anyone, after having made Confession, should fall into a mortal sin (may God avert it), before having completely fulfilled all the works prescribed for gaining the Jubilee, he must confess again, and first complete at least one of those works prescribed, in order to obtain the Indulgence attached to the Jubilee." The question is asked: In this case, is the Holy Communion sufficient as the final work? The Apostolic Penitentiary, having considered the aforementioned, and with the approval of the Most Holy and Divine Pontiff, Pope Leo XIII, answers: Affirmative (1). Given in Rome, in the Sacred Penitentiary, on the 20th of February, 1900. DECLARATION concerning the commutation of visits to the Basilicas. In the "Notes," mentioned above, number XIX, it is read: "Whoever has once partaken of these graces for the first time, whether when attaining the Jubilee, or when having fulfilled all the prescribed works, cannot again partake of them, if, after having obtained the Jubilee for the first time, he again incurs censures, or commits reserved sins, or requires new dispensations from vows." The question is asked: Should the commutation of visits to the Basilicas be included among the graces, of which one cannot partake a second time for the attainment

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of the Jubilee, so that he who has already availed himself of it once, cannot again partake of that commutation a second time? The Apostolic Penitentiary, having considered the aforementioned, and with the approval of the Most Holy and Divine Pontiff, Pope Leo XIII, answers: Affirmative. Given in Rome, in the Sacred Penitentiary, on the 20th of February, 1900. (1) See Vol. XXXII, 528.

[*Latin ed. p. 638*]

638 FROM THE APOSTOLIC PENITENTIARY DECREE concerning the repetition of visits on the same day. In the aforementioned admonitions, number XXIV, it is written: "The visit to the four basilicas must be completed in one day, or, at the very least, from one to the other during the middle of the night, or from the vespers of the preceding day until the vespers of the following day." The following question is posed for the practical guidance of the faithful: Whether he who, for example, after the tenth hour of the civil day has completed the visit to the four basilicas, whether he observes the natural day or the ecclesiastical day, may again enter the last basilica and there profitably repeat the visit immediately, with the intention of completing the remaining visits on the following day? The Sacred Penitentiary, after consideration of the matters presented, with the approval of His Holiness, Pope Leo XIII, responds: With the understanding that a precise definition of the time when vespers begin is made, a matter to be consulted with approved authors; in all other respects, affirmatively. Given in Rome, in the Sacred Penitentiary, on the 20th of February, 1900. DECLARATION concerning the repetition of the prescribed works for obtaining the Jubilee. The undersigned, Gaetano M. Sergio Barnabita, humbly petitions the Sacred Penitentiary for appropriate declarations concerning the following questions: I. Whether the present concession to obtain the Holy Jubilee up to two times for those who repeat the prescribed works, can be considered extendable to a greater number of times, or even as many times as desired, provided that the same works are repeated. II. Whether those persons mentioned in the Bull, such as those living in cloistered communities or similar institutions, who, not being able to go to Rome, can nevertheless obtain the Indulgence of the Jubilee this year, will also be able to avail themselves of it in the coming year when the grace is extended outside of Rome. III. The same question is asked for those who, having gone to Rome this year and obtained the Jubilee, whether they will be able to avail themselves of it again when the grace is extended outside of Rome, by repeating the prescribed works. The Sacred Penitentiary, after consideration of the matters presented, responds:

[*Latin ed. p. 639*]

FROM THE SACRED CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION, 639 To those Inquisitors outside the city, to whom,

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by the Bull *Aeterni Pastoris*, it is permitted to grant the Jubilee, they may, through repeated acts of obedience to the injunctions, only twice during the course of the Holy Year. In the city, however, as often as they wish. To II and III: Affirmative. Given in Rome, in the Sacred Penitentiary, on the 17th of March, 1900. FROM THE SACRED CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION. DOUBT: Can a concubinage, subsequently made civil, be healed, in which the husband, before the civil act, was proven to be impotent? Most Blessed Father, Berta, a Catholic from the Archdiocese of M., being free from any impediment, entered into concubinage with Titius, also free from any impediment, approximately five years ago, and lived with him with fidelity and marital affection. Most recently, on the month of September of the year 1898, she entered into what they call a civil marriage before a civil magistrate. From this union, two children were born, one of whom, born on the 29th of September, 1894, was baptized and raised in the Catholic faith, and the other, born on the 29th of March, 1896, died a few weeks after birth. The parish priest of said Berta has earnestly endeavored to bring her to a valid and licit marriage. It now appears that, were there not an impediment of perpetual impotence, arising from the fact that said Titius, in the month of June, 1896 (i.e., two years before the celebration of the civil marriage), was, with the testimony of both witnesses, rendered incapable through a surgical operation, a dispensation regarding the impediment of mixed religion could, with due precautions, be granted. It seems that only recourse remains to be had to a dispensation regarding the root of the union. Indeed, the intention, or marital consent, was not lacking, nor, at least after the civil contract, is the outward appearance of marriage absent, so that the aforementioned parties act as husband and wife, and...

[*Latin ed. p. 640*]

640 From the Sacred Congregation of the Holy Office, the following is to be observed. Since, through the granting of a dispensation, provision is made for the salvation of the recovering soul and for the legitimacy of the surviving offspring, while the denial of a dispensation would necessarily lead to separation and would expose the parties to very grave dangers, we earnestly commend the prayers of a Catholic woman for the obtaining of this grace. *From Friday, in the fourth place*. March 8, 1900. 3 In the general congregation of the Sacred Congregation of the Holy Office, held by the Most Eminent and Reverend Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned prayers had been presented, and after the vote of the Most Reverend Consultors had been heard, the same Most Eminent and Reverend Fathers were commanded to respond as follows: In the case presented, a dispensation at the root cannot be granted; and furthermore, since the marriage cannot be validated, the supposed spouses ought immediately to be separated. If, however, this is morally

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impossible, then, with due precautions, they should live together under the same roof as brother and sister. As for the canonical legitimacy of the offspring, it is possible to grant it through a rescript from the Prince. On the following Saturday, the 9th day of the same month and year, through the faculties granted to the Most Eminent and Reverend Cardinal Secretary of the Holy Office, His Holiness, Pope Leo, by the grace of God, XIII, approved the resolution of the Most Eminent and Reverend Fathers. I, Canon Mancini, Notary of the Holy Office.

[*Latin ed. p. 642*]

642. "Meanwhile, the man, pursuing the remedies of the healing art, consulted new and more renowned physicians, at the urging of Amalia's father; but all hope of reconciliation between the spouses vanished, when, by the judgment of Doctor Cardarelli, the family of the bridegroom was informed that the man suffered from such impotence that there was no hope of consummating the marriage. Therefore, a little later, with the man's consent, the woman appealed to the Supreme Prince, requesting the dissolution of the marriage, which was declared valid only because, as she herself stated in her petition, "it has unfortunately not been consummated, while her husband has been unable to consummate it." Upon receiving this petition, the Neapolitan Court decided to respond "for the sake of information," and the Neapolitan judge, after hearing the testimony of the man, sent letters to the Sacred Congregation, in which some doubt about the man's potency was revealed. With this in mind, the Neapolitan Ordinary was instructed to proceed with the case, both regarding nullity and regarding the alleged lack of consummation and the reasons for granting a dispensation. In truth, the Neapolitan Court, through a delegated judge, with customary skill and expertise, initiated the proceedings; it first examined the spouses and many witnesses, both those summoned by the court and those summoned voluntarily, and also subjected Amalia to a physical examination by four midwives and two doctors. Furthermore, seven doctors were consulted, who examined the man and treated him, and accurately expressed their own judgment regarding his virility. But what is singular in this process is that one of them is the most illustrious Doctor Cardarelli, who affirms the man's absolute impotence; while the other doctors, predecessors in the Neapolitan clinic, rather attribute the lack of consummation of the marriage to a psychological impotence of the man. The woman, however, while in her petition for a dispensation from marriage, now, through her advocate, asserts, in addition to the lack of consummation, the nullity of the marriage due to the man's absolute, or at least relative, impotence. The defendant, summoned, also denies the lack of consummation of the marriage, but through his lawyer, claims to be suffering from a demonstra-

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ble physical impotence."

[*Latin ed. p. 643*]

NEAPLES defends: both spouses, in order to strengthen their own arguments, presented the opinion of the doctors. The synopsis: the advocate who defends the rights of the actress strives to prove that, in this case, the marriage was not only not consummated, but was null, either absolutely or, at the very least, relatively, due to the husband's absolute, or at the very least, relative, impotence. And, first of all, recalling the legal principles concerning this matter, he notes that a marriage begun is, nevertheless, rendered null by the very law, in the case of a physical impotence, whether absolute or relative. Indeed, the advocate says, it is a well-established and proven principle in law that the purpose of marriage is, above all, to ensure that children are born from the union of man and woman. Hence, it is fitting that the Roman Catechism declares: "Marriage is said to be, because the woman ought to marry for this reason, namely, to become a mother; or because to conceive, bear, and raise children is the duty of a mother. Marriage is also called a union, because a legitimate woman is bound to a man as if by a single yoke. And also: 'Marriage is the marital union of a man and a woman among legitimate persons, containing a common life.'" From this, the advocate concludes that the most essential part of marriage is that one must be fit and suitable for intercourse, without which the essential purpose of marriage cannot be achieved. Therefore, all those who, either due to a defect of age, or due to a physical defect, are less suitable for intercourse are removed from the possibility of contracting marriage. On this matter, Devoti writes (lib. II, Sent. IX, § 129): "All are generally forbidden to enter into marriage because of a bodily impediment, to whom either youth, or a weak constitution, or a bodily defect prevents them from having children with their spouse... Those who, either by nature or by disease, are so constituted that they cannot mix their bodies with a woman, are forbidden from marriage." DEFENSE OF THE WOMAN.

[*Latin ed. p. 644*]

644 From the Council of Trent: "There are also women who have such an impediment that it excludes marital intercourse. Whoever is afflicted with this vice, if it is permanent and existed before the marriage, vainly attempts to enter into marriage, which is null by the very law of nature." Furthermore, he states that it makes little difference whether the impotence is natural or caused by malice, or whether it is absolute or only relative, because it always invalidates the marriage, since it always opposes the primary purpose of marriage. For, as is stated in Decretum Gregorii IX, lib. IV, cap. VI, tit. XV, impotence, whether natural or extrinsic, whether absolute or relative, if it is permanent and pre-existing, always invalidates the marriage. He further notes that pre-existing and permanent impotence

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invalidates marriage by the very natural law, whether it is absolute or relative; but absolute impotence invalidates the marriage with all persons; relative impotence only with the spouse and those similar to them. Thus, Gasparri expressly states in cap. 1, 2, 3, 4, 5, 6, 7, Tit. Vii: "Indeed, Gasparri (Tractatus de Matrimonio, Vol. I, n. 526) states that in such a case, the right to cohabitation is impossible, which is the formal and essential object of the marital contract: but a contract without a formal, essential object cannot even be understood by the law of nature. Furthermore, St. Thomas (4 distinct. 54 qu. un. a. 1) states that in marriage there is a certain contract by which one is obligated to fulfill a carnal debt: therefore, just as in other contracts it is not proper to obligate someone to give or do something that they cannot, so it is not proper for a marriage contract to be made by someone who cannot fulfill that carnal debt." From this, the aforementioned author concludes that marriage is invalid from the point of view of impotence, provided that it is pre-existing, in the following cases: "If a man can penetrate a woman's vagina with his member, but does not emit true semen... If a man has a flaccid member, such that he is not capable of at least sufficient erection." In such circumstances, the insertion of the member into the vagina is impossible, and either no semen is emitted at all, or it is emitted without any force, so that the penetration of the semen is...

[*Latin ed. p. 649*]

NEAPOLITANA 649, that he has not improved from the state in which he found himself; and from some secret information, it has been learned that he has not even succeeded in any union with a woman already deflowered, and in causing her to become aroused in order to excite his sensuality." Therefore, it is deduced that Ianuarius suffers from a physical, not a psychological, impotence, and that this is all the more so, because, according to the opinion of Cardinal De Luca, the dangers arising from him with other women, even those who are corrupt and more easily led astray, as are prostitutes, have not produced any happy outcome in intercourse. If this were the case, the defender concludes, based on what has been mentioned above, that, contrary to the hypothesis which the speaker does not consider to be true, the physical impotence from which Ianuarius suffers is only relative; therefore, according to the doctrine of law, the marriage itself would not be null and void. DEFENSE OF THE MAN. The advocate, who has taken on the defense of the man, declares first that he does not in any way object to the granting of a dispensation regarding a marriage that has been consummated and not consummated. For, according to the speaker, the marriage has not been consummated. With this established, his argument is divided into three parts: first, he shows that a marriage cannot be declared null on the grounds of impotence, unless it is certain that the man is perpetually and incurably impotent, to such an extent that

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not even the slightest doubt can be conceived to the contrary. This, he says, is declared in chapter 6, on fraternity, concerning frigidity and bad constitution: and the opinion of all authors confirms this. And rightly so; for marriage possesses value, and in case of doubt, one must stand by its value. Although the authority of Coscia de sep. tor. lib. 3, cap. 2, n. 386, is sometimes cited to the contrary, it is clear, the speaker points out, that the words of this author must be understood in such a way that, given the existence of impotence, it is argued that it preceded the marriage; but not that it serves as proof of impotence, if this remains doubtful. This is confirmed by the decree of the Sacred Congregation, which constantly states that, if any doubt remains, the marriage is never declared null, but only to be considered as dissolved, so that it remains valid and not consummated. And finally, experience confirms this: for if, at times,

[*Latin ed. p. 650*]

650 From the decrees of the Holy Council, although not fully proven, the renunciation of power [from Potenza] has resulted in very serious inconveniences due to this imprudence. For it happens that a man judged impotent, having relations with another woman, generates offspring; and the wife, who, having obtained her freedom, has joined herself to another man, is forced to return to her former husband, abandoning her children. This has recently occurred in the cases of Varsavia, on February 22, 1890, and September 10, 1898, and especially in Canada, on February 23, 1895. In these cases, ruin, either temporal or eternal, threatened the spouses, unless the Pontiff, by granting a dispensation for marriage, had prevented so many evils. The advocate does not deny that, if the impotence is doubtful, although marriage cannot be declared invalid, it is permissible, without the consent of the Holy Congregation, to forbid the spouse from contracting another marriage. However, according to the advocate, the Holy Congregation does not decree this unless two conditions are present: 1° that there is no doubt whatsoever about the impotence, but that it appears to have some degree of certainty. For if the doubt is not so serious, freedom should not be restricted, lest the man, unable to contract marriage, give himself over to illicit loves. 2° That there is hope that, through legitimate proofs, through an examination of the genitals, this doubt will be dispelled. For if all proofs have been employed and the doubt persists, the permission to contract other marriages should not be denied. The advocate demonstrates that the first condition is required by the decrees of the Holy Congregation, which often, even when the impotence was doubtful, did not forbid new marriages, because this doubt did not appear to be so serious. He cites several cases judged by the Holy Congregation, among which he recalls the case of Bologna, on May 8, 1896, in which a man had striven for fifteen years to consummate his marriage, and was declared by three examining physicians to be incapable of coition. In the case of Annecy, on December

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14, 1895, the spouses had lived together for seven years, and the husband openly confessed that he was unable to have intercourse. In Paris, on August 21, 1897, the same man clearly acknowledged his impotence: "I affirm that the marriage has not been consummated. This responsibility falls upon me; but it is mitigated..."

[*Latin ed. p. 651*]

NEAPOLITANA 651, concerning my sickly state characterized by external signs which I indicated to the physician, namely, a nervous disorder and an umbilical hernia. Mechlin, March 28, 1896: in which there were so many indications of impotence that the theologian considered it necessary to prohibit new marriages, without ambiguity. Paris, March 18, 1899: in which the Archdiocesan Curia considered the man to be impotent, stating, "We believe the man to be impotent." Bayonne, September 11, 1897. Rhemen, February 29, 1896. Vallis Vidonis, May 2, 1896. Paris, March 28, 1896, etc. The second condition, the advocate proves, based on the authority of Emi D'Annibale, who in *Summa Theologica Moralis*, volume 3, number 317, states: "If impotence is doubtful, and the doubt concerns the fact itself, then this refers only to those impediments which are of divine law... that is, the impediment of marriage, consanguinity, and impotence... Thirdly, in the case of doubt about impotence, to enter into marriage subject to divorce, and to prohibit any marriage, are both publicly harmful; but the latter is far more harmful, both in itself, and because the dangers of divorce are increased where children are lacking: therefore, I follow the opinion that marriage can be contracted." Having established these principles in law, the advocate proceeds in another section of his argument to the question of fact, and maintains that in the present case, neither impotence is proven, nor is there even the slightest doubt about it. He cites the opinion of six physicians who were questioned by the Inquisitor and who made a judgment regarding the state of the genitals, which they had examined. These physicians, namely, Gubitosi, Di Giacomo, Iennaco, Gallozzi, Piccinino, and Bianchi, with one voice stated that the man was such that no suspicion of impotence could exist. Furthermore, he presents the opinion of three archiatrists, namely, Topai, Postempscki, and Bertini, who recently examined the genitals in Rome and felt exactly the same way. From this, it is clear that not only can no marriage be declared, but that even other marriages, apart from these, should not be permitted to the man. For, according to the opinion of the physicians, there is no doubt of impotence: and the physicians are experts in matters of medicine.

[*Latin ed. p. 652*]

652 From the Council documents, it must be stated. The defender continues, saying that, even if the hypothesis were absurd, that the physicians had not been certain, but had only expressed a doubt about Potenza's power:

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nevertheless, the faculty could not deny the possibility of another marriage for Ianuarius. For, after so many examinations, no other avenue is opened to dispel the doubt; in this case, according to the opinion of Emi D'Hannibale, which was stated above, the marriage should not be prohibited. The objections of the lawyer are anticipated and he attempts to refute them. First, he speaks of the supposed menstruation, from which, since Ianuarius did not cohabit, the father of Amalia presumes an impotence. And he asserts that the fact that Ianuarius did not cohabit should not be attributed to impotence; but rather to a temporary frigidity, which they call psychic impotence, since it arises from a moral cause or from some phantasy. Regarding this psychic frigidity, all the authors agree that it disappears when the moral cause that generates it ceases, or when the phantasy is calmed. But, according to the defender, these moral causes are so clearly revealed from the records that it seems superfluous to discuss them at length. Indeed, it is clear that Ianuarius almost went to the marriage bed ignorant of Venus. It is clear that the son's innocent timidity was increased by the father's actions; for, while he provided remedies to excite Venus, he thereby caused Ianuarius, who was doubting his power, to doubt even more. Furthermore, it is not hidden that the woman, Amalia, accepted the man offered to her not out of love, but out of the convenience of the situation. With regard to this, he says that, when the incentives of love ceased, the girl was all the more restrained from cohabiting by the incentives of shame. The lawyer recalls the tearing of the schedule, in which a dowry was promised; from which he says that, if, on a certain day, while the couple was staying in Rome, the marriage had not been consummated. He also recalls the fact that then, both the wife and the parents and the father-in-law were urging Ianuarius; for they were pressing with insistent solicitations that he should cohabit; and if he did not cohabit, they threatened divorce. From this it followed that...

[*Latin ed. p. 657*]

657. He employs the services of a phalanx of archiatrists; and these, having examined the body of Ianuarius, all, without exception, declare that Ianuarius is free from physical ailment and attribute his condition to psychic impotence. Not content with this, Ianuarius goes to Rome, and, for the purpose of obtaining counsel, he consults experts Franciscus Topai, Paulum Postempski, and Leopoldum Bertini, who examine his body and, with one voice, testify: that the opinion of the physician Cardarelli should not be followed, but that it must be admitted that, in this case, the condition is one of psychic impotence. Therefore, the defender of the marriage, seeing that these most distinguished men hold opinions so different from those of the equally distinguished archiatrists Ioseph Lapponi and Antonius Cardarelli, and that he must judge whether Ianuarius is or is not valid, according to whether he has been summoned by Ianuarius himself or by the opposing

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party, concludes that medical science lacks the safeguards by which the present controversy can be resolved without the grave risk of error. The advocate does not doubt that there are six hundred eminent practitioners of the medical art who, if summoned by the defender of the marriage, as they are entitled to be, or if it pleases Ianuarius, would readily declare, with great emphasis, the presence or absence of physical and psychic impotence. With these considerations in mind, the following questions concerning the case of Ianuarius were submitted to the Sacred Congregation: I. Does a nullity of the marriage exist in this case? And, if so, II. Should a dispensation from the marriage, which is valid but not consummated, be requested from the Most Holy Congregation?

RESOLUTION. The Sacred Congregation, after deliberation on April 29, 1899, decided to respond as follows: To I, a response will be provided in II. To II, Affirmative. Acts, Volume XXXII, page CCCLXXXIII, 42.

[*Latin ed. p. 658*]

658 FORLIVIBN. AND CAESENATE. NULLITY. April 29, 1899. Sess. 21, cap. 3. De Tref. SUMMARY OF THE CASE. A noble man, Joseph, devoted to naval service, approximately 26 years of age, on November 26, 1892, entered into marriage in the parish church of St. Blaise with Julia, then approximately 22 years old, after the prescribed civil formalities had been observed. After the wedding ceremonies, the newlyweds immediately began to live together as husband and wife, and shared the marriage bed; but the marriage did not endure peacefully under the same circumstances in which it had begun. For, two months after the celebration of the marriage, the husband seems to have begun to fear that his wife was incapable of perfect marital union, due to his fruitless efforts to consummate the marriage, and the difficulty he experienced in fully completing the conjugal act. Concerning this matter, the husband consulted with experts in the medical arts, and remedies of the art were applied; nevertheless, for a considerable time, the husband kept his wife with him, hoping that the woman might become more capable in the future through the skillful intervention of a surgeon. However, after approximately twenty-two months from the date of the marriage, an event occurred which disturbed the domestic peace. For, Joseph considered his wife to be unfaithful, because she had behaved with undue familiarity with a certain soldier, with whom Joseph subsequently engaged in a duel; therefore, considering her to be unfaithful, he compelled her to separate from him and return to her father's house. After some time, Joseph appeared before the civil court, requesting a declaration of the nullity of the marriage due to the wife's impotence; and the lay judge, after an examination of the woman's body, declared the marriage to be null.

[*Latin ed. p. 659*]

FORLÌ AND CESENA, 659. •Because of his absolute, perpetual, and

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pre-existing impotence, the aforementioned man appealed to the Sacred Ordinary Consistory to obtain a solution, even in the ecclesiastical court. Regarding this matter, after the informative letters had been received both from the Ordinary of Forlì and from the Bishop of Cesena, in whose diocese Joseph resided, the prayers were submitted to the Forlì Consistory with the mandate to conduct a trial concerning the alleged nullity of the marriage, and with the authority to delegate proceedings up to the proclamation of the sentence. Since the woman's obstinacy was feared, a decree was issued stating that, if the woman refused to undergo a medical examination, the expertise of those who had been examined in the civil court should be considered sufficient. In truth, the judge of Forlì, delegated by the Bishop, initiated the trial: Joseph was questioned by the Subdelegate in Tarenti, where he was performing his duties; witnesses, both those summoned by order of the court and those summoned by delegation from Cesena, were also heard: all of these testified not only concerning the man's honesty and veracity, but also concerning the woman's impotence. Julia was also summoned judicially, but she stubbornly refused to appear in court and to submit to a judicial examination, even after three summonses. However, a deposition was taken from her extrajudicially before the judge of Forlì, before the trial was completed, by order of the Sacred Consistory. But, although she was accepted by the judge to give this deposition under oath, she refused to do so. Furthermore, the doctors who, by order of the civil judge, had examined the woman were questioned; these, after declaring that the woman's impediment to carnal intercourse was permanent, confirmed their findings under oath by providing an authentic document of the completed examination before the ecclesiastical judge. With all of this presented, the judge of Forlì, having heard the proponent of the marriage bond, rendered a judgment declaring the marriage null, based on the grounds of the woman's impotence.

[*Latin ed. p. 660*]

660 FROM THE SYNOPTIC DISCUSSION OF THE DECREE OF THE COUNCIL OF TRENT. The consultant observed that the ecclesiastical court of Forlì-Ravenna, having examined all the evidence, rendered a judgment declaring the marriage null, based on the woman's impotence. While the specific facts of the case have been carefully considered, it is necessary to inquire whether the judgment of the diocesan court of Forlì-Ravenna should be confirmed or overturned, and whether the aforementioned marriage is indeed null due to the woman's impotence. Although Julia's deposition clearly indicates a permanent impotence, and she has not fully resolved the difficulties arising from it due to her obstinacy in refusing to submit to a new examination, nevertheless, after carefully considering the procedural records and the gravity of the matter, I believe that the question should be answered in the affirmative. Although

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marriage is made by consent, not by carnal intercourse, it is nonetheless certain that impotence, if antecedent and permanent, renders a marriage null and void, not only according to ecclesiastical law, as is evident from numerous titles in the De Frig. et Malef., but also according to natural law, because, as St. Thomas teaches in 4 distinct. XXXIV, question I, article II, "in marriage, there is a certain contract by which one is obligated to the other to fulfill a carnal debt; therefore, just as in other contracts, it is not fitting that someone should obligate themselves to give or do something that they cannot give or do; so also, the contract of marriage is not fitting if it is made by someone who cannot fulfill the carnal debt." Because "although the carnal act of copulation is not of the essence of marriage, nevertheless, the power to do so is of the essence of it; because through marriage, each spouse gives the other power over their body with respect to carnal copulation" ibid. ad. 1. It is considered that this impotence to have intercourse is permanent whenever it cannot be removed by any licit means, without a miracle and without endangering life, chapter 6 of the Fraternitatis De Frig. et Malef.

VOTE OF THE CANONIST.

[*Latin ed. p. 661*]

FORLÌ AND CESENA, 661. With these matters established, the testimonies of the parties must first be heard. The plaintiff, Joseph, testified under oath before the ecclesiastical judge that he had repeatedly and continuously attempted to consummate the marriage, but had always found the entrance to the woman's body completely closed, and he testified that the cause that prevented the consummation of the marriage was not the woman's excessive pain, nor a defect of age or proper physical development, but only "a true and pure physical and mechanical cause attributable to a defect in the genital organs, which defect, as was later explained to me by expert doctors and surgeons, was congenital, and therefore pre-existing at the time of the marriage." The judge then inquired: "Whether any expert in medicine or surgery was consulted, and whether any treatment was instituted for the woman after the discovery of her physical imperfection; and, if so, what was the opinion of the experts, and whether any hope of restoring the woman's ability to consummate the marriage arose from the treatments employed?" The response was: "Several doctors and surgeons were consulted for this purpose, and the woman was sent to a health facility in Padua to undergo a special treatment to correct her physical imperfection; and I am fully certain that such a treatment, involving repeated examinations of the genital organs, was carried out, because I personally witnessed the access of the surgeons, and they always expressed the opinion that any surgical operation was impossible to enable the woman to consummate the physical act of marriage. Furthermore, I add that the Lady Giulia was

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subjected to other examinations and consultations with surgeons from time to time, but the experts always issued their negative judgment regarding any possibility of the desired success." Therefore, the plaintiff stated, the marriage was neither consummated, nor could it be consummated, due to the woman's inability to cohabit with her husband, and, according to the judgment of the experts who were consulted, this inability was incurable and therefore permanent. However, the experts who were present during the period of cohabitation...

[*Latin ed. p. 662*]

662. From the testimonies of both parties, having examined the body of Julia, they were not questioned by the judge, as is noted in the Instruction of the Holy Congregation, § "If a complaint exists, nor are the testimonies of the same parties present in the proceedings." The woman, although she may have been unaware before the marriage of her own inability to have intercourse, nevertheless admits that it was known to her and to others that she had a perpetual inability to generate or to bear children, that is, sterility. However, concerning the very consummation of the marriage, she believes that the marriage was consummated, although not perfectly, due to a certain relative impotence with which she was afflicted at that time. The cause of this impotence or impediment appears to be attributed to a defect in the perfect development of the female organs. Therefore, as it is clear from what has been said, the testimonies of the parties do not fully agree with each other, both concerning the non-consummation of the marriage, and especially concerning the perpetuity of the impotence. Therefore, in such a case, which of the two testimonies should be considered more reliable? The accepted opinion is that, generally, more credence should be given to a woman affirming the consummation of the marriage than to a man denying it. "The authors, citing Thomas Sánchez, book VII, disputation CIX, number 9, give three reasons for this. The first is, because she testifies in favor of the marriage, which is of the greatest importance. The second is, because it is not likely that she would wish to live with a man knowing that she cannot fulfill her marital duties with him, especially since women are often moved by carnal desires. The third is, because if the woman is guilty, she must be absolved, unless the man proves the contrary. And so teach St. Thomas, St. Bonaventure, Durando, etc." However, Sánchez adds: "As Hostiens, John of Freiburg, Supplementum Pisanae, Rosei, Sylvester, number 6, rightly points out, unless the man proves her to be a virgin by the appearance of her body, the same should be said if he proves her to be impotent, as seems to have happened in this case; then more credence should be given to the man. As we said in number 6, if the woman denies intercourse, but the man affirms it, more credence should be given to him

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than to her, if she proves herself to be a virgin by her appearance."

[*Latin ed. p. 663*]

FOROLIVIEN. ET CAESENATEN. 663 Deinde, mulier, cuius depositione, utpote non iurata, nullam meretur fidem contra iuratas assertiones viri, excludit plenam matrimonii consummationem, et suam ad coeundum impotentiam agnovit, non solum dum cohabitatione perdurante, cum se medicorum inspectioni saepe subiecit, sed etiam post discessum a viro, cum scilicet causa deferebatur ad tribunal civile « credendomi cioè in allora inabile al matrimonio », nullamque affert rationem, qua probet se processu aetatis viripotentem evasisse, quin ullam subierit operationem chirurgicam, quod sane a vero abhorrere videtur cum agatur de muliere, ad coeundum impotente, usque ad vigesimum quintum aetatis suae annum. Praeterea, si Iulia consensum praebere nequit, pro conficiendo processu canonico super nullitate matrimonii, quia, ipsa asserente, propriae potentiae ac proinde validitatis matrimonii conscia est, qua de causa nuntium misit defensioni, tum sui iuris, tum matrimonii, atque perfracte dele ctavit novam sui corporis inspectionem, ex qua veritas depositionis elucescere potuisset? Hac profecto agendi ratione mulier, quae non cupit matrimonium dissolutum, id unum intendere videtur, ut Iosephum sibi perpetuo alligatum retineat. Ad haec, testimonium, quod vocant "septima manus," favet potius viro quam mulieri. Verum equidem est, testes a viro productos, nihil audivisse, tempore cohabitationis conjugalis, de impotentia Iuliae, praeter unum. Verumtamen, testes "septimae manus" a viro inducti, de quorum probitate et credibilitate fidem faciunt parochi, uno ore laudant honestatem, religionem ac veracitatem actoris eiusdemque depositioni plenam fidem habendam censent, atque omnes fere testes ex utroque latere arbitrantur, Iosephum ex impotentia potissimum Iuliae adductum fuisse, ut dissolutionem matrimonii peteret. Testes autem ex latere mulieris, quorum honestatem, religionem atque veracitatem commendat Rmus Pro-Vicarius Generalis, etsi Iuliam mendacem non pronuntient, nihilominus eam, uno altero excepto, feminam levem, nec...

[*Latin ed. p. 664*]

664. From the Sacred Council, it is judged to be highly religious, and more certain witnesses have testified, before the separation of the parties, concerning the impotence, or at least the physical imperfection of the woman's genitals. Furthermore, the witnesses do not support the woman's testimony concerning the judgment given by the physicians who had made the examination. However, it appears that the woman has not undergone any surgical operation by which she might be made fit for consummating the marriage. Moreover, the confession of Julia herself clearly excludes such an operation. Finally, the witnesses, with overwhelming evidence, refute the woman's assertion that she has, over

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time, without any surgical operation, been able to consummate the marriage. Given these circumstances, I believe that the confession of the man should be given greater weight in the case of a woman's confession, although it cannot be permitted to assert that the testimony of Joseph, even if confirmed by the testimony of seven witnesses, establishes a certain and undeniable antecedent and perpetual impotence of the woman. However, the testimony of the physicians who examined Julia seems to definitively resolve the matter. But concerning the proof of impotence, "if it cannot be established by another defect of the body, an examination of the bodies must be employed, of men by physicians and surgeons, and of women by midwives and other matrons" (C. fraternitatis 6, and c. fin. hoc tit. iuncto c. proposuisti 4, and c. causam 14 de probat.). This is true in practice: for if the question is about a higher quality of the woman, beyond her knowledge, e.g., whether a woman who has been stitched up can be made fit for intercourse without danger to her life, even then surgeons and physicians should be consulted to examine the woman. (Sánchez, lib. 7 de matrim, disp. 113 n. 21. Reiffenstuel, etc.). Schmalzgrueber, lib. IV part. III tit. XV n. 75. "If, by the judgment of experts, there are indications and signs of complete and certain physical impotence, e.g., if a man lacks testicles or both, or if a woman appears to be completely incapable of intercourse due to excessive height, the marriage should be dissolved without delay, without other proof, or solemnity."

[*Latin ed. p. 665*]

FOROLIVIEN. AND CAESENATEN. 665: It is necessary to dissolve [the marriage]; and in this case, it will not be necessary to administer the marriage vows to the spouses, but it will suffice that they are presented [for examination], and that this is attested to by physicians and others who testify to the presence of such signs. Glossa in cap. 6. of this title, etc., etc. The reason is that in such a case, the nullity of the marriage is certain; and once this is established, carnal commerce is contrary to natural law, as stated in loc. cit. n. 78.

Indeed, three physicians, most skilled in their art, unanimously testify that they have observed in the body of Julia, signs and indications that are certain and evident of antecedent and perpetual impotence. It is by no means surprising that these three physicians, who examined the body of the woman without the order of an ecclesiastical judge, neglected, both during the examination itself and in the subsequent report, the laws established by the Church on this matter; however, it appears that the physicians conducted the examination in such a way as to be able to clearly ascertain the condition of the woman's genitals; if, indeed, the aforementioned physicians, in the presence of Julia's mother, conducted the examination conveniently, freely, diligently, and in accordance with the rules prescribed by the medical art, and after completing the examination, all the experts,

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without any disagreement, were compelled by the evident truth to agree on the same judgment, without any doubt whatsoever, so that they consider a new examination of the woman's genitals to be entirely superfluous, because the impotence of the woman has already been thoroughly observed and explored through the examination already completed, and they confirmed their report under oath, not only in the civil court, but also before an ecclesiastical judge; and although it does not appear from the procedural records that the experts professed the Catholic religion, nevertheless, their expertise in the art of medicine, their honesty, and their veracity are confirmed by authentic testimony of ecclesiastical authority; therefore, credence should be given to the testimony of the experts.

However, if an examination in accordance with the norms of canon law is desired, this deficiency should be attributed only to the woman, who, although in the civil court, if credence is given to her statements, she submitted herself to the examination without any objection, but completely rejected any examination in the ecclesiastical court.

[*Latin ed. p. 666*]

666 FROM THE SACRED COUNCIL. The aforementioned physicians, after completing their examination, presented the following written report to the lay judge, and confirmed it with an oath before the ecclesiastical judge. It has been determined that there is no valid marriage whenever one of the contracting parties suffers from a prior and permanent impotence to consummate that union by which spouses become one flesh. Furthermore, a woman who lacks a vagina suffers from an impotence to consummate the union by which spouses become one flesh; since this union and, consequently, the joining of the spouses into one flesh, are accomplished through the emission of the male seed and its reception in the woman's proper vessel, or vagina. Indeed, according to the judgment of experts, to which one should adhere in this case, Julia is entirely without a vagina, and therefore, the marriage in question is null by reason of the woman's impotence; since this impotence, being contracted by her from nature and congenital to the woman, is certainly prior to the marriage, besides which, it is presumed that the marriage preceded the impotence, which originates from a natural defect, especially if a doubt arises immediately after the marriage contract, as happened in this case, because a quality inherent in nature is not presumed to have disappeared, and even less is it presumed that a woman, who from birth possessed a certain natural capacity, could have been so quickly reduced to impotence. Sánchez de matr. lib. VII. disp. CUI. n. 4. Schmier Iurisprudentia canonico civilis libr. IV tract. III cap. II n. 93. Reiffenstuel lib. IV tit. XV n. 28. Schmalzgrueber lib. IV part. III tit. XV n. 11. etc. But this impotence also appears to be permanent. Above all, the experts assert, under the sanctity of their oath, that Julia was born with such a nature that she will never be able to, nor ever have been able

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to, live in harmony with her husband, or with any other man. Moreover, this natural defect does not seem to be able to be corrected by any means without endangering the woman's life. In the report presented to the lay judge, the experts affirm that Julia lacks a vagina.

[*Latin ed. p. 667*]

FOROLIVIEN. ET CAESENATEN. 667 cialem, if it can be conceived, cannot be formed without danger. Zacharias, in his *Quaestiones Medicae, Legales*, Book IX, title III, question V, discusses the congenital occlusion of the vagina, and in section 4, he states: "Therefore, the membrane, and I am always speaking here of the preternatural membrane, not of the hymen, will either be thin, or thick and fleshy, or it will be perforated, or not; or it will be located either internally, towards the opening of the uterus, or in the middle of the cervix, or near the external os: for all these differences make a great difference in determining which occlusion is curable, and which is incurable; also which can be cured easily, which with difficulty, and which can be cured with some risk to life... Therefore, the thicker this membrane is, the higher it is located, the more closed it is, and the more it lacks a hole, the more incurable it is, indeed, in no way curable. The thinner it is, the lower it is located, the more *pervia* (Werfen), the easier and with less danger it can be cured; but that which is in an intermediate state is also subject to a moderate degree of danger and difficulty of cure." The esteemed Zacharias also states something similar in Book III, title I, question VII, section 29. In the work entitled "Dictionnaire des dictionnaires" by Guérin, under the word "atrésie," it is written: "But atresia can affect the more internal passages, the vagina itself, and even the cervix of the uterus; in these cases, one is most often faced with the greatest difficulties, and one must act with extreme caution to restore the passages that have remained imperforate." Indeed, according to the physicians who examined the body of Julia, the matter is not about any thin membrane, or a perforated one, or one located only internally, towards the opening of the uterus, or in the middle of the cervix, or near the external os alone, but about a complete and total atresia, or an obstacle, whatever name it may be called, which is strongly resistant, completely closed, and lacking any opening, which extends from the external opening of the vagina to the cervix of the uterus. Therefore, since the defect in Julia's body, as discovered by the physicians, is far more serious,

[*Latin ed. p. 668*]

668 From the Sacred Council, it is all the more evident that this condition is in no way capable of being remedied. It must be added that, according to the opinion of Thomas Sánchez in book VII, section 93, paragraph 15, if doctors are doubtful about the danger of death from the incision of a woman's vessels, the marriage should be considered null. "If," he says,

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"doctors doubt whether the danger of death is imminent from that incision, then the danger of death is considered to be present. Just as if doctors judge that a certain food is lethal, the person who uses it would sin mortally, as if he were truly exposed to the danger of death. And therefore, if it is doubtful whether something is a mortal sin, and he does not avoid it, he sins mortally; because he is truly exposed to the danger of a mortal thing. Similarly, when there is doubt about the danger of death from the incision, the woman truly cannot undergo that incision, lest she be exposed to the danger of death; and therefore, this impediment cannot be removed without the distinction of death. And thus, the marriage will be null." Therefore, the impotence of cohabitation is proven in the following ways: 1. by the testimony of an honest and truthful man, who, although he has made repeated attempts, has never been able to penetrate the woman's conjugal union; and it does not seem to matter that the man did not immediately know of the woman's physical, antecedent, and perpetual impotence, because spouses, even if they certainly discover that they cannot consummate the marriage, often do not know whether that impotence is perpetual or temporary, or whether it can at least be cured by surgery without danger to the woman; 2. by the entire conduct of Julia in the ecclesiastical trial; 3. by the testimonies of many witnesses, concerning both the physical imperfection and the impotence of Julia, as well as the judgment of the doctors, who declared that the woman was unfit for consummating the marriage while the parties were cohabiting; 4. and especially by the account and sworn testimonies of three experts, who, after examining the woman's body, declare and affirm, without any doubt whatsoever, that Julia certainly suffers from an intrinsic, congenital, antecedent, perpetual, and absolute impotence of cohabitation. Therefore, I believe that it is established in this case.

[*Latin ed. p. 669*]

FORLÌ AND CESENA. 669, concerning the nullity of marriage based on the wife's impotence, or to confirm the judgment of the episcopal court of Forlì, forbidding the woman from entering into new marriages; although it must be admitted that this matter could have been more safely resolved through a dispensation from a valid but unconsummated marriage, if the husband had requested such a dispensation, since the lack of consummation of the marriage appears quite certain, and the reasons required for granting a dispensation seem to be present. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE EX OFFICIO. The lay magistrate, to whom Joseph appealed, on December 11, 1895, dissolved the civil bond, based on the testimony of three physicians, who declared: "1. The genital organs of the Lady Giulia, due to a vicious anatomical conformation, namely, the complete absence of the vagina, which is the primary female organ for sexual intercourse, are absolutely unfit for genital functions." "2. This impotence of the Lady in genital functions is manifest and permanent." "3.

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We declare it permanent, because even if it were possible, through a daring and serious surgical operation, not devoid of dangers, to reconstruct an artificial vagina, it would be a vagina too small to properly serve for copulation." "4. This genital impotence of the Lady is congenital (that is, determined by a halt in the development of the genital organs during intrauterine life); therefore, it is, needless to say, prior to November 26, 1892, the day of the marriage of the Lady Giulia to the Lord Count Joseph." The ecclesiastical court of Forlì also annulled the marriage on May 18, 1898. The learned canonist consultant easily adds his opinion to the judgment of the Forlì court. However, he does not seem to consider the asserted nullity of the marriage to be entirely certain, concluding: "Although it must be admitted that this matter could have been more safely resolved through a dispensation from a valid but unconsummated marriage..."

[*Latin ed. p. 670*]

670 FROM THE HOLY GENERAL COUNCIL, it is stated: "If a man of this sort had requested this dispensation, it should be evident that the marriage is not consummated." The defender says, "It is my understanding that there is neither a nullity of the marriage nor an impediment to its consummation." And indeed, the Instruction issued by the Sacred Congregation of the Council on August 22, 1840, cautions: "If the complaint concerns impotence, expert physicians should be consulted, whom the spouses have consulted." And Julia confesses: "I have undergone two or three times a surgical examination by expert doctors." Julia's mother says: "I also know that Professor Ruggi, a medical surgeon at the clinic in Bologna, examined my daughter about a year after the marriage." Truly, none of these doctors have been heard. Furthermore, one of the three experts who examined Julia at the order of the civil judge, does not assert that the impotence has any hope of cure. Indeed, Julia denied at the time that there was either a nullity of the marriage or an impediment to its consummation. With these observations, the question was raised: Should the judgment of the Court of Forlì in this case be confirmed or overturned? RESOLUTION: The Holy Sacred Congregation, after deliberation on April 29, 1899, decided to respond: "The judgment should be confirmed."

§ 3. § # = GENOA. ANNUAL CONTRIBUTION. On January 17, 1900. Session 22, chapter 6, Concerning Reforms. SUMMARY OF THE AGREEMENT. Christian charity, diffused in every work of piety, persuaded Francis Spinula, a noble citizen of Genoa, to provide assistance from his goods, which he would leave after his death, to those who, in prisons or on ships, are burdened by the weight of their punishments for their crimes. Therefore, the Genoese College of Missionary Priests...

[*Latin ed. p. 671*]

IANUEN. 671, concerning urban or rural properties, a testamentary cod-

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icil was established on October 14, 1834, wherein the testator declared his will as follows: "I establish and name as heir one-third of the Congregation of Suburban Missionaries, whom I implore (the Suburban Missionaries) to extend their zeal and charity towards all those who groan under the weight of human injustice: I say all, but especially those who bear the chains of military service and of crime, striving with the income from said one-third to assist them and to render them amenable through their instruction, and to encourage more frequent use of the sacraments and to endure their sufferings with patience. I constitute and name the two Superiors, that is, the Superior and the elder of said Congregation of Suburban Missionaries, and for the third, the President of the Reverend Magistracy of Mercy, as the three whom I have named as my testamentary executors, and I commend to them the full execution of this my will." However, on February 17, 1835, he rescinded this codicil with regard to the institution of an heir; and he made a bequest, for the same purpose, to the Suburban Missionaries, of the sum of 25,000 *lire*; stipulating thus: "I alter the aforementioned will, and I annul the aforementioned institution of an heir, and I leave to the aforementioned Congregation, as a bequest, 25,000 *lire*, for a single time, to be given by my heirs within one year from my death, with the obligation, however, that the aforementioned Congregation shall always fully fulfill the same duties that I have indicated in the aforementioned will, which I wish to be repeated here." The testator passed away on March 19, 1836. And the Suburban Missionaries did not receive the bequeathed sum from the heirs until December 12, 1838; namely, after certain disputes had arisen between some of the legatees and the heirs and had been settled. But when the execution of the bequest was being carried out, the Missionaries began to be troubled with doubts concerning the genuine will of the testator. For, considering the words of the testator, which most clearly express his supreme will, namely: "I establish..., one-third of the Congregation..."

[*Latin ed. p. 672*]

672 FROM THE DECREES OF THE HOLY GENERAL COUNCIL concerning the Missionaries of the Suburbs... to which I pray they extend their zeal and charity towards those... » Hence, the Missionary Priests were in doubt whether they ought to pay the entire bequeathed sum to those condemned to imprisonment; or only a portion; and this, indeed, seemed more in accordance with the institute of the Legate's Congregation, namely, to carry out sacred missions to rural populations, which the testator knew well, and the testator's own actions demonstrated, for while he lived, and through the hands of the Missionaries, he gave large sums, now to one, now to another. To remove all doubt, the Missionary Fathers appealed to the Holy Congregation under the year 1841, requesting the following. "Regarding all that is expressed in the will and codicil, the following points must be considered: 1. The Most Reverend Testator did not ignore, nor could he

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ignore, that the Congregation of Rural Missionaries had never performed any spiritual service for those who, in any way, are undergoing the punishment for their crimes by sentence of the law." "2. The Testator himself, on several occasions, entrusted a certain sum of money to the aforementioned Congregation to be given as temporary assistance to condemned individuals, and especially to those condemned for having taken something from the sacred font, to whom, in his will, he bequeathed one hundred and twenty Piedmontese livres." "3. The same Testator inquired whether the Congregation had sufficient revenues for the missions, both for those in the present diocese and for those in other dioceses, which are customarily carried out each year." "4. To the same Congregation, the Testator imposed a not insignificant obligation, namely, to faithfully execute what is prescribed in the will, especially since it concerns a debt owed to the heirs." "5. Finally, the Congregation accepted the legacy together with the obligations, considering it beneficial to themselves, intending, as mentioned above, to give something each year to those condemned; and the remainder to be spent on missions: and for two years hence, they did so, giving two hundred Piedmontese livres to the aforementioned condemned."

[*Latin ed. p. 673*]

GENOA, 673: "Distributing these, and the remainder is almost entirely used in fulfilling missions." "With these matters established, the Superior and Assistants of said Congregation, in the name also of their other confreres, consulting their consciences, humbly request a response to the following questions: "1. Are the aforementioned legatees obligated to expend the fruits in temporal support for all those mentioned in the will?" "2. And if so, to what portion of the fruits should they be allocated?" "3. Are they safe in their conscience regarding the fruits already received and expenses incurred as mentioned above?" The Ordinary of Genoa, expressing his opinion, stated: "Regarding this matter, if the Holy Congregation, to which Your Eminence rightly presides, were to accept my opinion, Your Eminence should know that I believe that the individual fruits of the legacy, as mentioned in the very will, should not be entirely allocated to the temporal support of the condemned, as mentioned in the will of the late Mr. Francis Spinola, but rather only a portion of them, such as one-third, or perhaps one-half, as the Holy Congregation itself may determine. For it has seemed to me more fitting for the aforementioned testator that the missions be more frequently held throughout the entire diocese than that the condemned receive temporal relief; which is further evident from the very words, as he requested that this be considered, but did not absolutely command it, while not being unaware that another Congregation, namely the Urban Missionary Congregation, diligently attends to the spiritual needs of those same individuals." "Moreover, I would add that it would be most beneficial if the aforementioned Urban Missionaries themselves ensured

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that the alms are distributed by the Rural Missionaries, so that through these alms they may be able to draw the same condemned individuals to greater spiritual benefit." The Sacred Congregation responded on July 5, 1841, adhering to the opinion of the Ordinary: "On July 5th, the Sacred Congregation..."

[*Latin ed. p. 674*]

674 FROM the Sacred Congregation of the Council of Trent, through the Cardinals interpreting the Council of Trent, having carefully considered the testimony of the Most Reverend Archbishop of Genoa, benignly decreed that, given the truthful accounts, and with prior absolution regarding the past, the aforementioned contribution from the condemned, amounting to one-third of their income, which is given to the legate, with the obligation of transferring the same one-third to the Congregation of Urban Missionaries, who shall use it according to the will of the testator, at their discretion, with prudence, and according to what is described above in their vow, may freely reduce and moderate it, and shall be able to do so: provided, however, that the petitioners shall be obligated to demonstrate annually before the same Most Reverend Archbishop, or the Ordinary for the time being, the faithful transfer of the aforementioned one-third. By virtue of the decree of the Sacred Congregation of Suburban Missionaries, the sum of 333.33 was paid annually to the Congregation of Urban Missionaries until the year 1894; but subsequently, they ceased to provide this sum, claiming that they were no longer bound by this obligation after the condemned from Genoa were no longer held in prisons and galleys, but were instead transferred from the year 1887. The Urban Missionaries did not receive these funds, and this matter was disputed before the Curia of Genoa, but a definitive resolution of the controversy was not reached. Subsequently, the Rural Missionaries appealed to the Sacred Congregation on May 24, 1897, requesting that they be declared no longer bound, given the changed circumstances, to the annual contribution in favor of the Urban Missionaries, by virtue of the rescript of July 5, 1841; and furthermore, that they be granted permission to remit the same sum in the future for the performance of sacred missions. The Suburban Missionaries stated in the aforementioned document: "Thus, the Suburban Missionaries transferred annually to the Urban Missionaries the sum of 333.33, until January 1, 1894, without realizing that the prisoners to whom these funds were to be distributed had been transferred to the island of Palmaria since 1887, and from there were transported to La Spezia, where they still reside. The Urban Missionaries, in turn, received the money without realizing this, believing that it was due to them for other reasons."

[*Latin ed. p. 675*]

JANUARY 675: "Only at the beginning of the year 1895 did the Subur-

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bans realize the situation and suspend such payments. "Now wishing to regularize their situation, the Missionaries of the Suburbs first ask what they must do regarding the past, after which, since the convicts are no longer in Genoa, the Urban Fathers have no longer been able to distribute to them the sums that were delivered to them for this purpose, and, if necessary, they supplicate for a regularization concerning their Congregation. "Secondly, with regard to the future, since the convicts are absent from Genoa, and the prisoners in the common prisons are already adequately assisted by the Venerable Company of Charity, the Missionaries of the Suburbs implore His Holiness to grant them the permission to devote to the benefit of their Missions the annual sum in question, including that which might be reimbursed to them by the Most Reverend Urban Fathers regarding past payments; and this is because, thanks be to God, great good is achieved even in times of sorrow through these Missions, which are regularly carried out at all expenses of the Congregation, except for travel when going outside the Diocese; given the many requests that are constantly increasing from the various Dioceses of Liguria and Upper Italy, and the relative scarcity of means of the Congregation, which for this reason must often reject the requests that are presented to it." The Archbishop, having inquired about the information and the request, on July 22, 1898, reported the following: "In response to the note of May 28, 1897, I am pleased first of all to state that what is presented by the Most Reverend Missionaries of the Suburbs is in accordance with the truth. Furthermore, the sum of 333.33 Lire, which the aforementioned Missionaries faithfully transferred until the year 1894, according to the Decree of the Sacred Congregation of 5 July 1841, into the hands of the Urban Missionaries for the purpose of being spent in relief of those condemned to the chain, was, as they candidly confess, considered by the same Urban Missionaries, due to a factual error, as something else."

[*Latin ed. p. 676*]

676 FROM the decrees of the Holy Council, concerning the revenues to be spent on the Missions which preach in this and other dioceses, and on the preservation of a distinguished Library, which they maintain for the public in this city. The Suburbani, moreover, since 1895 (the year in which they ceased to transfer the aforementioned sum to the Urbani), have used it for the expenses of their own Missions. "The reason for the petition of the Suburbani presented to this Holy Congregation is the tranquility of their conscience, and the scarcity of revenues, which are insufficient to satisfy all the requests for Missions that are made to them. Furthermore, there are no longer, in Genoa, those condemned to the chain, for whom they were required to provide that sum, and the Company of Mercy, as far as the current laws permit, provides for the needs of the other prisoners."

"Having been asked by Your Eminence, I frankly express my opinion;

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and it is that it would be very good if this Holy Congregation, settling all past matters for both Congregations of the Missionaries, were to accept the requests of the Suburbani, which, in obedience to its orders, I return to them."

"Regarding what the Archbishop asserts concerning the disbursement of the sum; namely, 'that it came from the very Missionaries of the Urbani, as they frankly confess, due to a factual error, and was considered by them as another of their revenues to be spent on the Missions which they preach in this and other dioceses, or on the preservation of a distinguished Library, etc.,' it cannot be determined from the documents contained in the file of proceedings, from what time this error began; however, over time, both the Suburbani and the Urbani became ignorant regarding the nature of the annual payment, so that this disputed matter, brought to light from the archives, arose only after the dispute arose concerning the omission of the annual payment."

"Indeed, the very Missionaries of the Urbani, in a supplicating letter given to the Archbishop on March 19, 1896, confess: 'If the Suburbani were unaware of the nature of their relationship with the Urbani, it cannot be..."

[*Latin ed. p. 677*]

GENOA. 677 states that the citizens of Genoa were aware of this. They had before them a fact that was regularly renewed and always unchanged for more than fifty years, and they could therefore reasonably consider it to proceed from a legal and stable principle, in which they were not at all mistaken. But what was this principle? Whether they knew it or not, they imitated the citizens of the suburbs and worked with imagination. Again, the Archbishop was asked to report whether in any way the will of the pious founder could be fulfilled by providing spiritual assistance to those detained in prison in Genoa, or by providing some aid to those who truly need it, or even by providing Christian instruction to boys and girls who live in correctional institutions, or by some other means that is more closely related to what the testator designated, and in a letter dated March 7, 1899, regarding this matter, he stated: "Now, as has already been explained to this Holy Congregation for many years, there are no prisoners sentenced to the chain in Genoa, nor are there houses of correction for children for whom a portion of the fruits of the endowment could be directed; there are prisons, but these are provided for by the Company of Mercy, at least to the extent that is permitted by the present government laws with respect to these places. Therefore, the requests of the Missionaries, directed to obtaining the benefit of the entire fruit of that endowment for their Missions, could be accepted. I say they could be accepted because I cannot conceal from Your Eminence that the Urban Missionaries, to whom, according to the Decree of this Holy Congregation, dated July 5, 1841, 333 lire were given to be used for the benefit of those sentenced to the chain (which, as

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has already been stated, was not done), intend to have acquired a right, to which they do not seem willing to renounce, and which they, in fact, claim." However, the Urban Missionaries themselves, in a supplication given to the Archbishop on December 5, 1895, confirm their method of action as follows: "Therefore, although currently..."

[*Latin ed. p. 678*]

678 FROM THE HOLY GENERAL COUNCIL: The prison in Genoa no longer exists, and it is no longer possible for them to exercise the customary works of charity towards the condemned. Therefore, they must not be deprived of their right to participate in the *Legato* in the manner established and practiced for over fifty years. "Furthermore, after the prison was moved to La Spezia, until a few years ago, there remained two penal institutions at Forte di San Giuliano and at Castellaccio, in both of which the Urban Missionaries exercised their zeal and charity every year. "It is regrettable that these two institutions of punishment have been suppressed, as this deprives us of the opportunity to benefit those who suffer under the weight of human justice. In Genoa, there are judicial prisons where the Venerable Company of Mercy has already demonstrated its desire to invite the Urban Missionaries to perform exercises or missions; therefore, these missionaries are always able to offer their services according to the intention of the late Monsignor Spinola." Finally, the Pro-Vicar General of Genoa, in a letter dated November 6, 1899, testified: "Having read the request of the Reverend Mr. Don Cesare Danese, President of the Urban Mission of Saint Charles in Genoa: "Having seen and examined the accounting books and minutes of the aforementioned Congregation: "It is declared and attested that the Congregation of the Urban Mission of Saint Charles in Genoa, since the last century, provided spiritual service to the prisons of the Galley ships, both within the city and outside the city, at Foce, at San Giuliano d'Albaro, and at Castellaccio, and continued to do so until the year 1890, in which year the Royal Government removed all prisons from the city and its vicinity, leaving only the judicial prisons. "From the above, it appears that when the Congregation of the Urban Mission was entrusted with fulfilling the *Legato* of Spinola, it could not be understood as being limited only to the spiritual service of the condemned individuals existing in the Darsena (in the city), but also to the service outside the city, as was indeed continued until 1899, providing assistance to the detainees of..."

[*Latin ed. p. 679*]

"Capraia Island, Savona, Alessandria, Oneglia, and other places." Since the matter was to be definitively determined by the Sacred Congregation of the Council, the following formulas of doubt were proposed by the procurator of the Urban Missionaries, and I decreed that they be accepted, since

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no one contradicted from the part of the Suburban Missionaries: they are as follows:

I. Whether the Congregation of Urban Missionaries is due from the Congregation of Rural Missionaries an annual payment of 333.33 lire, derived from the income of the pious legacy of Spinula, according to the decree of the Sacred Congregation of the Council of July 5, 1841, in case I.

And to this, the affirmative answer:

II. Whether the aforementioned annual income, not paid since the year 1894, is due to the same Congregation of Urban Missionaries, in case?

When the Suburban Missionaries received notice of these proposed doubts, they, in a letter of December 7, 1899, requested that the first doubt be supplemented with the phrase "even if the circumstances have changed, as expressed in the will of the Archbishop." However, it was considered necessary to understand this implicitly in the very formulation of the question, and therefore it was deemed unnecessary to insert such an addition; moreover, the opposing procurator strongly objected.

Furthermore, the same Rural Missionaries proposed a third doubt, formulated as follows: "To the negative answer to doubt 1: 3. Whether the aforementioned Congregation of Urban Missionaries is obligated to return to the Congregation of Rural Missionaries the income improperly paid by the latter." This doubt was deemed acceptable, and the opposing procurator, having been informed of the matter, did not contradict.

Synopsis of the Discussion.

The advocate first argued that it was not necessary to grant the Rural Missionaries the disputed sum, which was intended for sacred missions; secondly, that this sum should be left untouched for the Urban Missionaries. Then, recalling the words of the testator's highest praise, he said: "These things are so clear that they require no DEFENSE OF THE URBAN MISSIONARIES."

[*Latin ed. p. 680*]

680 FROM THE INTERPRETATION OF THE HOLY GENERAL COUNCIL. For it is a saying among jurists: it is wicked to interpret obscurely. "In clear matters, there is no need for discussion." Mascardus, *De probatione concionum*, 96, § 18, vol. I, page 65. Aug. Taur. 1597. "Words that are clear and manifest, he who wishes to interpret, must not distort." Iasonius ad *1. Quidquid astring.* But the adversaries object that the testator did not command, but merely requested, that assistance be given to those confined in prisons: "I beg that charity and zeal be extended to all those who groan under the weight of human justice." But the advocate replies that they are bound not by counsel, but by command. For the testator himself, adding a codicil to the will, stated: "I obligate, however, this Congregation always to fulfill completely the obligations that I have indicated in

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the aforementioned will, which I wish to be understood as repeated here." Therefore, the Holy Congregation graciously conceded that a portion of the income should be destined for missions, "with prior approval regarding the past, and that the aforementioned performance, in favor of the condemned, should be applied to one-third of the legacy's income, with the obligation that the same one-third be delivered to the Congregation of Urban Missionaries... so that it may be able to reduce and regulate it." With this established, the advocate continues, the clear wills of the deceased must be carefully guarded; and care must be taken, lest, for the benefit of the heirs, they be carelessly overturned. "Those things which are destined for a specific purpose by the generosity of the faithful, must be converted to that purpose, and not to another." Clement. 2. *De rebus domesticis*, III, 11. And if the Pontiff has the power to change these things, he does not do so unless a legitimate and compelling reason is alleged. "This matter is very difficult... For changes to the wills of the deceased are heard with disfavor, because they are contrary not only to positive law, but also to natural equity, and therefore are held in horror and abomination." Pignatellus, *Consultationes canonicæ*, vol. IV, cons. 148, § 15, page 235. With regard to this matter, the Council of Trent decreed that changes should only be granted when there is a just and necessary reason, and that such a reason should be considered legitimate. "Changes to the last will and testament must be made only for a just and necessary reason." Session 22.

[*Latin ed. p. 681*]

IANUEN. 681, cap. 6, de reform. The same is taught by the writers of civil law; and they add that it is then more strictly prescribed, when there is someone for whose benefit it is most important that the will be observed with the utmost piety. "In those matters which have arisen for the private benefit of individuals, which happens most frequently, a completely obstructing cause is required for their execution, which cannot in any way be fulfilled." *Moneta de commut. ultim. volunt.*, Lyons, 1624, cap. VI, § 61, page 369; "and therefore, the Apostolic See does not usually grant a change of will, unless it cannot otherwise be fulfilled." *Pignatellus cons. can.*, loc. cit., n. 12. – The Holy Rota in Hispalis, before Cardinal Ubaldo, on December 19, 1631, in its deliberations, p. III, decision 182, § 2, page 112, and in Syracuse, on December 12, 1613, decision 167, n. 3, page 191. The same is affirmed; the advocate insists, citing the Holy See's discipline, which refused to change the wills of the deceased six hundred times, because necessity did not demand it. The question was truly raised whether, with diminished income, it was permissible to expend it on something else. The response was: "Rather should the burdens be lessened, than the income be transferred to another thing." "Is there a place for a diminution of burdens, or rather, for a change of will, in this case? – Affirmative with respect to the first part, and negative with respect to the second." *Camerinen. seu

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Fabrianen. Legati*, January 20, 1770; *Lucana comm. vol.*, March 30, 1737. And finally, so that no one might be wronged, diligent care was taken, so that the public good might sometimes outweigh the benefit of one individual. And the consul of the monastery, designated by the testator, who was inhabited by only one monk, was ordered to proceed, although the Bishop considered it advisable to consult with the college of priests; *Syracusana*, September 18, 1751. From this, the advocate infers that there is no argument to be made, no persuasion to be offered, to disregard the law in the case of those condemned to prison; since it is still easy to provide for their needs. Therefore, what was said about the monks, who were making the same objections, in the previous century, should be said about the adversaries, the advocate argues, namely: "It was considered that the non-execution of the testator's disposition did not arise from the thing itself, nor from any other external cause that would prevent its effect; but only from the will."

[*Latin ed. p. 682*]

682 From the decree of the Fathers of the Council, concerning those who desired that an inheritance be applied to a use other than that which the testator had desired, from the secret records in the case of Taurinen, concerning wills, on December 2, 1719. But the opponents object that the condemned, sentenced to the galleys in Genoa, are not kept there; therefore, it is not possible today to fulfill the testator's will. But the advocate replies that those condemned, whether they are kept in Genoa or elsewhere, are included in the testator's intention: "all those who groan under the weight of human justice, I say all, but especially those who bear the military and criminal chains."

Furthermore, the advocate notes, the decree of the Holy See clearly states that a third part of the income should be allocated for this purpose. This means that the testator's mandates must be observed faithfully and completely: "the provision in favor of the condemned shall be a third part of the income of the legacy, with the obligation of delivering the same to the Congregation of Urban Missionaries, who shall be able to and shall administer it according to the testator's will."

Then, proceeding to the second part of his argument, the advocate asserts that the Rural Missionaries have already experienced the clemency of the Holy See, since a third part is to be allocated to the condemned. This provision, however, must be administered by the Congregation of Urban Missionaries; indeed, the Rescript of the Holy See ordered that the aforementioned provision in favor of the condemned, which is a third part of the income of the legacy, be delivered to the Congregation of Urban Missionaries, with the obligation of delivering the same third part to the Congregation of Urban Missionaries, according to the testator's will, so that the advocates are obligated to report to the same Archbishop or Ordinary each year on the faithful delivery of the aforementioned third part. There-

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fore, the Holy See has entrusted the Urban Missionaries with the entire care of fulfilling what the testator provided. The testator ordered that the received money be distributed, without consulting the Rural Missionaries. He ordered the Bishop to be informed each year that he had properly distributed it. Therefore, the burden has been transferred to the Urban Missionaries, which the testator had imposed on the Rural Missionaries, the advocate concludes.

Furthermore, the Rural Missionaries object to this burden.

[*Latin ed. p. 683*]

In Genoa, they claim to have considered themselves free, and therefore, they state that, in each year, they submitted votes regarding the money to be given to Urban. And they did this for so many years because it was always approved by votes. But the advocate responds that the Rural Missionaries considered this to be unjust and acted wrongly; since the intention of the Decree of the Sacred Congregation for Propaganda of the Faith was to impose this burden. Therefore, the Rural Missionaries were mistaken in thinking this way. And, he insists, today they cannot deny the obligation to pay, as if its fulfillment were impossible; since those condemned to the galleys are no longer detained in Genoa. For in the document from the Vicar of Genoa, it is stated: "It is fully established that the Congregation of Urban Missions of St. Charles in Genoa, since the last century, had the service of the prisons, including the galleys, both within the city and outside, at Foce, at St. Giuliano d'Albaro, at Castellacelo, and continued this service until the year 1890, in which year the Royal Government removed all prisons from the city and its vicinity, leaving only the judicial prisons; the service was continued until the current year 1899, providing for the prisoners of the island of Capraia, of Savona, of Alessandria, of Oneglia, and other places." Finally, the advocate argues that it is in no way permissible for the opposing side to interpret the Rescript of the Sacred Congregation in the way they claim, that the Urban Missionaries were delegated to fulfill this task, under the name of Rural Missionaries, as long as those condemned to the galleys were detained in Genoa; for the patron argues that both the Rescript of the Sacred Congregation and the executive letters of the Archbishop are firmly in accordance with the will of the testator, and that not even a hair's breadth is permitted to deviate from it; since in the Rescript, the task is assigned to the Urban Missionaries, "who will carry it out according to the testator's will."

DEFENSE OF THE SUBURBAN MISSIONARIES.

On the other hand, something has been brought to light in favor of the Suburban Missionaries. Indeed, how things stood when the controversial Rescript of the Sacred Congregation was issued was candidly stated by the

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Urban Missionaries in a document given to the Archdiocesan Curia at the very beginning of the legal proceedings, on December 5, 1895. "The Urban Missionaries maintained that the will of..."

[*Latin ed. p. 684*]

684. From the testimony of the Sacred Council, that Congregation was called upon to undertake the task of assisting those who were in need, and especially those who bore the chains of military and criminal punishment. "Such were, in truth, the Urban Missionaries, who, from time immemorial, every Sunday taught the catechism in the penal prison, and made weekly visits to the sick in their hospital, assisting them by providing them with milk, oranges, and all those things that would alleviate their suffering, with which they sought to make them docile to their instructions and to the frequent use of the Sacraments. "Such things are not done by the Suburban Missionaries, nor could they do them, because this task was entrusted to the Urban Missionaries by ecclesiastical and civil authority, which also provided them with some assistance to alleviate the heavy expenses they incurred in performing these very works of charity, as enjoined by the Marquis Spinola in his testaments. "Furthermore, the preaching in the city was entrusted to and reserved for the Urban Missionaries, precisely because they were so called, for the principal place where their zeal and charity were exercised, while the Suburban Missionaries had as their field of activity the suburbs and the villas, always excluding the city, where, because of the penal prison, they could not exercise their charitable work." Therefore, it is clear that at that time the Urban Missionaries had their own province, as the very name obscurely indicates, a province entirely distinct from the province entrusted to the Suburban Missionaries; and this was done with the greatest prudence. Today, certainly, things have changed from the ancient state; for in the inner port of Genoa, commonly called the Darsena, those condemned to the galleys are no longer held. Therefore, it is easily understood that at that time the Urban Missionaries were indeed accustomed to and, as it were, continuously providing assistance, both corporal and spiritual, to those who had been condemned to the galleys, so that the origin and intention of that assistance, which was provided to them by the Rural Missionaries, might gradually fade from memory and understanding.

[*Latin ed. p. 685*]

JANUARY 685. It happened that, with circumstances altered, the Urban Missionaries found no suitable outlet for the funds, and decided to apply the same income to pious missions or to another equally worthy purpose. From the beginning, it was not easy to determine the testator's intention, because, on the one hand, he had thoroughly known the institution of the Rural Missionaries; or, he knew that these missionaries were accustomed to

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giving sacred sermons and instruction to those condemned to the galleys; on the other hand, without ambiguity, he urged them in the testamentary documents "to extend their zeal and charity to all those who groan under the weight of human justice." Therefore, in order to reconcile the testator's will with their institute, the Rural Missionaries, in a letter sent to the Curia of Janua on January 29, 1896, explained the matter as follows: "However, in this case, it is not a question of any missionary preaching or exercises, but of charitable assistance combined with religious comfort, loving instruction, and pious exhortations, which could be carried out entirely privately, as the confreres of the Society of St. Vincent de Paul do for the families they visit." Indeed, the Rural Missionaries themselves stated in a pamphlet given to the Sacred Congregation for the Propagation of the Faith in 1841: "2nd. The testator himself, on several occasions, entrusted the aforementioned Congregation with the task of providing temporary assistance to those condemned to the galleys, etc." When the time came to execute the bequest, and because of the concern that the Urban Missionaries had long held for the imprisoned, the Archbishop was able to express his opinion. "Moreover, I would add that it would be most expedient for the Urban Missionaries themselves to take care that the distribution of alms be carried out in the name of the Rural Missionaries." Therefore, the Urban Missionaries were, in fact, established as agents to facilitate the distribution of alms, in the name of the Rural Missionaries. I say "facilitate" because of the reason already mentioned by the Urban Missionaries; namely, that they were entrusted with the urban areas, and therefore with the prisons and galleys at the port of Janua, while other missionaries were assigned to the suburban areas. In the mandate, however, it is not stated—

[*Latin ed. p. 686*]

686 From the decrees of the Council, it is understood that those faculties which, in a particular case, one would not likely have granted, are included; according to the established rule of law. However, since the time the concession was established, the circumstances have changed so much that today, the duty of providing alms to the poor cannot rightly be transferred from the Missionaries of the Countryside to the Missionaries of the City. For in Genoa, within the city walls, those condemned to the galleys are no longer present, as was the case before. Moreover, these and other condemned individuals are now kept elsewhere, and both the Missionaries of the Countryside and the Missionaries of the City are equally prepared to offer assistance. Therefore, today, the Archbishop of Genoa has issued a decree which supports the request of the Missionaries of the Countryside and frankly acknowledges that the mandate previously granted to the Missionaries of the City is so outdated and so far removed from current conditions that it has fallen into disuse, and the origin and reason for it are now unknown even to the Missionaries of the City themselves. This decree,

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therefore, contradicts the decree of the current Archbishop, and rightly and deservedly contradicts the decree of Cardinal Tadini. Furthermore, it should also be noted that the current Archbishop, in his decree, points out that prisons and galleys are now very different from what they once were, and that the severe punishments, or rather, the deprivations and hardships they imposed on the condemned, are now much less severe.

The words that the most humane testator used to express the sorrow he felt for those condemned to the galleys – namely, "those who groan under the weight of human justice... who bear the military and criminal chains" – are now considered demagogic, born and suitable for stirring up the lower classes, and for provoking laughter and contempt in sensible men. Today, the punishments are so mild, and such a certain kind of humaneness follows the criminals, that it is certainly the excessive leniency of the punishments that is the ultimate cause of the increasing and multiplying crimes.

I have before me – the general regulations for the prisons and reformed penal institutions of the Kingdom – February 1, 1891 – and the concern of the legislator is primarily that the punishments do not harm the health of the condemned.

[*Latin ed. p. 687*]

IANUEN. 687: The conditions are worse; the quantity, quality, and distribution of food are arranged almost according to the measures used in hospitals; above all, the cleanliness and health of the prisons and guardrooms are taken care of; finally, everything proceeds in the light and before the eyes of the public orators, who have nothing older than defending the cause of the condemned in public assemblies. Because of the Republic's great concern for the condemned in prison, and because of the large sums of money spent, extracted by heavier taxes from honest citizens, the law does not allow food to be brought to the condemned by those who wish to provide it, except in certain cases, and only with special permission obtained from the Wardens of the prisons. Moreover, the law even more strongly urges the establishment of societies called by the names of charity, or mercy, or patronage of the accused, which would take care of the defense of the condemned, and especially of their moral instruction.

It is pleasing to note that these matters have been briefly explained by the Archbishop in his letters to the Sacred Congregation of the Council, and that it is better understood how much the state of affairs has changed, when the most pious Spinola, from the bottom of his heart, uttered these words. Therefore, it should be remembered the most prudent advice given by the Sacred Congregation of the Council, investigating the pious will of the testator, by Cardinal Tadini himself: he said: "For it seemed to me that it was more pleasing to the aforementioned testator to have greater frequency of missions throughout the diocese than the temporal comfort

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of the condemned; which is further confirmed by his own words, as he asked, not commanded, etc." Indeed, it should be said that the testator asked, rather than commanded, because he was addressing not a private citizen, but a Religious Congregation, which cannot, according to its own will, change its institutions and purpose, but sometimes does so, with careful consideration and with the permission of the Holy Fathers. Therefore, from the very subject matter, the testator should be understood to have asked, not commanded; all the more so because he himself had thoroughly considered the institution of the Congregation.

[*Latin ed. p. 688*]

688 FROM THE SACRED CONGREGATION FOR THE MISSIONS OF SUBURBAN REGIONS. – THE HOLY OFFICE, HOWEVER, ORDERED THAT EVERYTHING BE DONE – ACCORDING TO THE TESTATOR'S WILL; AND IT GRANTED REMISSION REGARDING THE PAST, BECAUSE THE PETITIONERS HAD REQUESTED THAT THEY BE SAFE IN CONSCIENCE. – IF THE CODICIL URGES THE EXECUTORS TO CARRY OUT THE WILL, BECAUSE IT LEAVES "COI OBBLIGO PERÒ SEMPRE... DI ADEMPIERE IN TUTTO E PER TUTTO ALII STESSI ONERI," ATTENTION SHOULD BE GIVEN TO THE FACT THAT MORE OBLIGATIONS ARE CONTAINED IN THE TESTAMENT, AS THE PETITIONERS REPORTED IN THE DOCUMENT FIRST SUBMITTED IN 1841 TO THE SACRED CONGREGATION. THEREFORE, THE QUESTION TODAY IS REDUCED TO THIS: WHETHER THE OBLIGATION COMMITTED TO THE URBAN MISSIONS, NAMED SUBURBAN MISSIONS, AND CORRESPONDING TO CONDITIONS OF TIME AND PLACE WHICH NO LONGER APPLY TODAY, SHOULD STILL BE OBSERVED. BUT IT IS UNDOUBTEDLY CLEAR THAT THE CIRCUMSTANCES HAVE BEEN ENTIRELY CHANGED, AS SHOWN BY THE VERY METHOD OF OPERATION OF THE URBAN MISSIONS, WHICH HAVE ALREADY CONVERTED THE ANNUAL SUM GRANTED TO A DIFFERENT PURPOSE. SINCE OUR QUESTION AIMS TO DETERMINE WHAT IS MORE CONFORME AND CONSISTENT WITH THE TESTATOR'S WILL, IT IS EVIDENT THAT THE TESTATOR APPOINTED THE EXECUTORS TO BE NOT THE URBAN MISSIONS, BUT THE SUBURBAN MISSIONS, AND ORDERED THEM TO PROVIDE TEMPORARY RELIEF TO THE SOULS OF THE DAMNED FOR THE GLORY OF CHRIST; AND TODAY, BOTH THE SUBURBAN AND URBAN MISSIONS ARE EQUALLY CAPABLE OF ACCOMPLISHING THIS, AND SACRED MISSIONS, WHETHER WITHIN PRISONS OR OUTSIDE, WERE UNDOUBTEDLY MORE DEAR TO THE TESTATOR; THEREFORE, IT SEEMS THAT THE REQUEST OF THE SUBURBAN MISSIONS BETTER ANSWERS THE TESTATOR'S WILL THAN THAT OF THE URBAN MISSIONS. WITH THESE CONSIDERATIONS IN MIND, THE FOLLOWING QUESTIONS

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HAVE BEEN PROPOSED: I. IS IT DUE TO THE CONGREGATION OF URBAN MISSIONARIES THAT THE CONGREGATION OF RURAL MISSIONARIES PAY AN ANNUAL SUM OF 333.33 FLORINS FROM THE REVENUE OF THE PIOUS LEGACY OF SPINOLA, ACCORDING TO THE DECREE OF THE SACRED CONGREGATION OF JULY 5, 1851, IN THIS CASE? AND, IF THE ANSWER IS AFFIRMATIVE: II. ARE THE ANNUAL INTERESTS, WHICH HAVE NOT BEEN PAID SINCE 1894 IN THIS CASE, DUE TO THE SAME CONGREGATION OF URBAN MISSIONARIES?

[*Latin ed. p. 689*]

JANUARY 6, 1889. And concerning the matter of whether the Congregation of Missions of Urban areas ought to restore to the Congregation of Missions of Rural areas the fruits unjustly collected in this case. RESOLUTION. The Holy Congregation, after deliberation on January 27, 1900, decided to respond: to the first question, negatively; to the second, with the proviso stated in the first; to the third, negatively. FROM THE HOLY CONGREGATION FOR RITES, a decree stating that it is permissible to proceed to bestow honors upon the two blessed martyrs, Dionysius of the Nativity and Redemptus of the Cross. LEO XIII. FOR THE EVERLASTING MEMORY. Indeed, a vast and fertile field has been opened by the Catholic Church in India, towards the East, where the labor of her workers might flourish, virtue might excel, and glory might shine forth; but which, if compared to one of such a nature as not to conceive of the Gospel, and not to understand the seed unless it were watered by the blood of Martyrs. And therefore, for this very reason, namely, the hope of martyrdom, expeditions to India by religious men of great spirit have been most readily undertaken. For a few years after almost all of India had been enriched by the labors of Francis Xavier, zealous ministers of Christ, like unto God, obtained for themselves both the glory of God and the eternal salvation of many, as well as exceptional praise for their merits and the crown of martyrdom. This work was not lacking in the distinguished Order of Carmel, which today rejoices in the number of its members, seeing among them the most noble. These are Dionysius of the Nativity and Redemptus of the Cross, whose virtues and deeds accomplished inspire a certain sweetness and offer salutary encouragement to the Christian people to imitate their examples. Dionysius was born in Huneflori in Cattolica in the year one thousand six hundred and one, to Peter Berthelot and Florida Morina, who placed the pursuit of domestic virtue in piety and virtue. In the sacred baptism, he received the name of his father and was called Peter. The young man, endowed with good hope and a wondrous disposition for virtue, early turned his mind to the cultivation of piety. It is said that Peter, even as

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a boy, Acts, Vol. XXXII, page CCCLXXXIII.

[*Latin ed. p. 690*]

690 ACCORDING TO THE CUSTOM, he used to publicly pray, lamenting his sins, and would hasten to the nearest church for the purpose of pious exercise during the day, and there, prostrate on his knees, he would offer prayers and humble supplications, striving to appease the divine will. Having grown older, he devoted himself diligently to those studies with which childhood is usually instructed, and then he applied all his care and diligence to the sciences of mathematics and navigation. He also completed long voyages, and, having conducted his own business, he often visited the most famous ports of Italy, Spain, France, England, and the United States. During these voyages on the open sea, while seated at the helm of the ship, but always with his mind and thoughts fixed on God, whenever an opportune occasion presented itself, he corrected the morals of the sailors, rowers, and crew, reminded them of their Christian duties, and, through his own conduct, he demonstrated examples of the virtues whose precepts he taught. Moreover, he could not bear it when the most holy name of God was profaned by impious words, or reviled with curses, and if he heard a voice uttering something more atrocious, he would suddenly become inflamed in the face, and would so sharply rebuke the offenders that, in his presence, they would not even dare to breathe or sigh. He first found employment among the Dutch, but shortly thereafter, because he would not submit as a Catholic to the heretics, he earned a salary among the Portuguese, where he gave a brilliant example of his character and intelligence. Shortly afterwards, they raised him to the rank of Navigator and Cosmographer, and, at that time, while the Portuguese were building and embellishing a great fleet, they entrusted Peter with the command of many ships. While seated with them on the deck, holding the helm, he sailed across many seas, and he encountered the Turks on more than one occasion, from whom he always emerged victorious, for he was a prudent, valiant, and devoutly Catholic man who spared nothing that experience, virtue, and constancy could achieve, and he risked everything to crush and destroy the most bitter enemies of the Christian name. But amidst the clamor of arms and the applause of victory, the voice of divine grace, calling Peter to himself, never ceased, always inviting him to contemplate heavenly things, to solitude, to peace. Therefore, when he once brought a fleet to the city of Goa, a well-equipped port in India, and himself went to the town, he secretly met with the Fathers of the Society of Jesus residing there, and he revealed his thoughts to them, confessing his long-standing desire to embrace the monastic life.

[*Latin ed. p. 691*]

FROM THE SACRED RITUALS, 691, he says that he knows the will of

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God sufficiently; he prays that he and his companions may not be burdened. But the President of the Society, who is not unaware that Peter is from Lusitania and that Riez is a cosmographer, rightly fears that, if he receives him, he will do an injustice to the Prorex. Firm in his purpose, he presents himself to the Discalced Carmelites, among whom he earnestly requests the same favor that he had unsuccessfully sought from the Society of Jesus. This happened after the Prorex learned of it, and he was greatly angered with the Monastery's Vicar, who had accepted Peter. The Vicar replied that Peter was, by birth and by the laws of Lusitania, a Gallic man, and that he could fulfill the duty that was requested of him; moreover, he pledged his word that, if the situation required it, the services of Peter would not be lacking to the Lusitanians. In response to this, the Prorex acquiesced, and Peter eagerly put on the habit of the Discalced Carmelites and began his novitiate. But shortly afterward, the Batavi besieged the port of Goens with a large fleet, and the Prorex requested the assistance of Dionysius, remembering his pledge. Persuaded by the Monastery's Vicar to defend the besieged city, Dionysius acted with courage and immediately set about the task. Therefore, he gathered soldiers, trained them, engaged in battle, and for three days he bravely fought against the enemy. He did not use a shield or sword, nor a helmet or armor, but, dressed in the Carmelite habit and with a bare head, holding the Cross of the Redeemer as his sword, he fought in the front ranks, where the most determined enemies rushed in, providing for everything, assisting those who were working, and encouraging the fainthearted with his words and example. Finally, after the city was freed from the siege, he recovered the port, and as the entire city rushed to meet Dionysius, he withdrew and fled into the monastery's cloister. There, in the friendly silence of solitude, in the tranquility of peace, he devoted himself with renewed zeal to his novitiate, which had been interrupted for the sake of war. After a few months, he completed his novitiate and, with a singular joy of spirit, was initiated into the priesthood and began to perform sacred duties. When he considered that he was no longer his own, but belonged to God, as if a slave and bound by a bond, it is almost unbelievable how completely he dedicated himself to the glory of God, to the safety and well-being of the Carmelite family, and to the eternal salvation of his neighbors. At that time, it happened that the Prorex of Goens sent Franciscus Soza de Castro, the governor of the island of Sumatra, as an envoy to the city of Achen. This Dionysius had.

[*Latin ed. p. 692*]

692 From the Sacred Rituals, since he had learned that the ocean was exceedingly treacherous, he "chose a master and companion of piety." Dionysius gladly accepted the assigned task and the Abbot appointed Redemptus, from the same Carmelite monastery, as his assistant. Redemptus, a man of Portuguese nationality, was named Thomas Rodríguez de Cuencha,

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and very little of his life and character has been transmitted to posterity. It is said that in his youth, Thomas earned a stipend as a soldier in his homeland and undertook a long voyage to India. Later, he was received into the monastery of Tatta among the Carmelites, where he rested from his travels, and he admirably performed the duties of doorkeeper. Afterwards, he was sent by the Abbot of the monastery of Goa, and with great diligence he performed this more important office, and earned great praise for his piety. A man of great humanity and kindness, with the most pleasant manners, he was loved by all, so that when Dionysius was given an assistant, the others resisted and sought reasons to delay or prevent his departure, but Redemptus, whose desire for martyrdom increased the more suitable and opportune the place seemed to be where he was about to go with Dionysius, hastened the time of his departure. Finally, the day arrived when Dionysius and Redemptus, prepared for everything and eager, departed with the legate from the monastery to the port. The brothers, weeping, embraced their companions and said a long farewell, knowing that they would not return. They boarded the ship, which was already ready to sail, and both experienced sailors, accustomed to the waves, eagerly began their arduous and long journey. After various dangers, after great difficulties from which Dionysius saved the ship, they finally reached Achem. The king, who, while pretending to observe the laws of nations, was in fact acting deceitfully, sent court messengers to the ship, who announced that those arriving should enter the port freely, proceed to the royal city, and receive the honor due to the legate and his guests. Deceived by this generous invitation, the legate of the Portuguese, with all his retinue, was led into the city, but suddenly, they were surrounded by Turks, bound, and finally dragged into prison. Then, by order of the king, all the captives were distributed to the leading men of the kingdom, each to a different one: Dionysius was placed in a dung heap, where filth and impurities were found; Redemptus was given to oxen to drive – and he was not even given food for himself. Thus, the fa-

[*Latin ed. p. 693*]

From the Sacred Rituals, 693: Two women, both leading lives of great piety, were sometimes visited by agents of Muhammad, who attempted to persuade them to abandon the Christian faith, promising them life, liberty, wealth, and honor, warning them not to exchange certain goods for uncertain ones. But two Carmelites, with the greatest fortitude and equal constancy, rebuked these temptations and invitations, declaring that they would not renounce the greatest gift of God, their faith, nor would they exchange eternal goods for fleeting and perishable ones, preferring the immortal joys of heaven to mortal torments and death. This response, having been reported to the King, the King ordered that all (except the Legate and some members of the Legate's family) be condemned to death,

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namely, the two Carmelites and about sixty other Catholics. Having been sentenced, Dionysius and Redemptus were led to the place of execution near the seashore, where a large crowd of people, eager for the spectacle, followed them. The martyrs, weakened by hunger, emaciated, bound in chains, and pitiable in appearance, but elevated in spirit, advanced slowly. As they reached the pyre, they prostrated themselves, raising their hands to heaven, praying to God that He would be present at that supreme moment and grant them assistance. The executioners, with pitiful cruelty, inflicted many wounds on their bodies with arrows. Redemptus, already near death from hunger, and having received a grievous wound, breathed his last. Dionysius, holding the cross he had used in his struggles, now comforted his fellow believers in the faith, encouraged those who were languishing in their final agony, and finally, wounded, fell. Then, a certain soldier, who had abandoned the Catholic faith, struck Dionysius on the head with a sword, cleaving it in two. Thus, these invincible heroes gloriously gave their lives for Christ, providing us all with proof of the divinity of the religion for which they shed their blood. Their fame quickly spread from distant regions of Asia to Europe, and after their martyrdom, the praise of the two Carmelites increased and was spread more widely. Therefore, after preliminary investigations by ordinary and Apostolic inquisitions, and after other proceedings in accordance with the law, the question of their martyrdom, the cause of their martyrdom, and the signs or miracles associated with them, was finally raised for discussion. This question was carefully debated, and both the Cardinals and the officials present gave their opinions: however, we postponed confirming their judgment, until we had earnestly prayed to the Father, that He might illuminate our minds with the rays of His light in this matter. Finally, on the eighth day before the Kalends of April of this year, 1920, a decree was issued.

[*Latin ed. p. 694*]

694 FROM the Sacred Congregation of Rites, we command concerning martyrdom, and concerning the cause of martyrdom, and concerning the signs that confirm martyrdom. Finally, in order to complete the legitimate series of acts, in the general meeting of the Sacred Congregation of Rites which was held before Us on the twenty-seventh day of the month of March, the following question was proposed: whether, with the approval of the martyrdom and its cause, it could safely proceed to the solemn beatification of those venerable Servants of God, and all responded with unanimous consent that it could safely be done. However, We did not immediately pronounce Our supreme judgment on such a matter, but rather, We implored the grace of heavenly assistance. On the sixth day of April of the same year, 1920, having been illuminated by the Host of Peace, We decreed that it could safely proceed to grant the honors of the blessed to the two martyrs, heavenly citizens. Since these things are

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so, moved by the prayers of the Order of Discalced Carmelites, We, by Our Apostolic authority, grant the following: that the Venerable Servants of God, Dionysius of the Nativity and Redemptus of the Cross, may henceforth be called by those names, and that their images, adorned with rays, may be publicly presented for the veneration of the faithful. Then, by the same authority, We grant that the Office and Mass may be recited annually for them, of the common martyrs, with proper prayers approved by Us, according to the rubrics of the Roman Missal and Breviary; and We grant that the recitation of this Office and the Mass may be celebrated in all churches in which both the Order of Discalced Carmelites and the Order of Carmelites use them, by all those who are bound to recite the canonical hours. Finally, We grant that the solemnities of the beatification of the aforementioned Servants of God may be celebrated in the aforementioned temples with a double Office and Mass, which We command to be done on a day designated by the Ordinary within the first year after the same solemnities have been celebrated in the Patriarchal Basilica of the Vatican. Notwithstanding all Apostolic Constitutions and Ordinances, and decrees concerning the prohibition of cults, and all other contrary things whatsoever. We decree that these letters, even in printed form, signed by the hand of the aforementioned Secretary of the aforementioned Congregation and sealed with the seal of the Prefect, shall have the same full force in discussions, even judicial ones, as would be given to the signification of Our will contained in these letters. Given at Rome, at St. Peter's, under the Fisherman's ring, on the fifteenth day of May, in the year 1920, in the twenty-ninth year of Our Pontificate. * S. ALOIS. CARD. MACCHI.

[*Latin ed. p. 695*]

695 FROM THE SACRED CONGREGATION OF THE ROMAN INQUISITION: Regarding the acceptance of abjurations from heretics who convert to the faith. By a response of the Sacred Congregation given to the Bishop of Bitonto on January 2, 1669 (which Decree, according to the response given by the Sacred Office to the Bishops of Borussia on December 21, 1895, is still in force), it was declared that Bishops, by ordinary authority, can absolve heretics who spontaneously appear before the external forum "after a legally made abjuration." In recent years, there have been diverse opinions in these regions regarding the validity of this clause. For some believed that the aforementioned ordinary power of the Bishops could only be put into effect when the Bishop proceeds in a judicial manner; thus, for example, one Ordinary from Germany, a man very skilled in canon law, in letters sent to this Court, explained his opinion that a Bishop wishing to exercise this ordinary power must induce the heretic to make the abjuration aloud before a Notary and two witnesses. This opinion has some basis in the cited Decree of the Sacred Office, since it requires that

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a legally made abjuration precede absolution. But such a judicial or legal abjuration is nowhere in use in Germany. In regions that are not Catholic, where conversions to the faith occur more frequently, there is no supply of Catholic Notaries. Furthermore, it is very important that the manner of abjuring be made easy and convenient for the converted heretics, and that conversions should not cause any disturbance or astonishment, which would occur if judicial or legal forms were employed. Therefore, everywhere, the custom has been that the abjuration of error and the profession of the Catholic faith are performed before a parish priest and one witness, or, if necessity so demands, before the parish priest alone, but always in such a way that the abjuration appears before the external forum and can be proven. Therefore, the abjuration should be considered not so much a judicial or legal act, but rather an act of pastoral office, but always valid even for the external forum. Given these circumstances, the undersigned Bishop N. N., so that the meaning of the cited Decree does not give rise to doubts, from the Sacred Inquisition.

[*Latin ed. p. 696*]

696 From the Sacred Congregation of the Holy Office, it humbly requests that it be declared whether a Bishop can, by his ordinary authority, absolve heretics, even if no formal, juridical abjuration is made, but rather before a single priest delegated by the Bishop, or before such a priest and a witness. Thursday, March 28, 1900. In the General Congregation of the Sacred Roman and Universal Inquisition, held by the Most Eminent and Reverend Cardinals, General Inquisitors in matters of faith and morals, after the aforementioned requests were proposed, and after the vote of the Most Reverend Consultors was heard, the same Most Eminent and Reverend Fathers ordered that the following be answered to the Bishop: It is permissible. The opinion is that an abjuration can be made before any person delegated by the Bishop, such as a notary, and before some persons as witnesses; and the instruction of April 8, 1786, should be given to the Bishop of Limerick. The aforementioned instruction reads as follows: "It is not necessary that those who have defected from the Catholic faith, and who afterwards wish to return to it, should make a public abjuration, but it is sufficient that they abjure privately before a few persons, provided that they keep their promises, and truly abstain from communicating with heretics in spiritual matters, or from doing anything that is a protestation of heresy. The same should be understood regarding those who privately abjure the heresy in which they have been raised from the beginning." On the following Saturday, March 30 of the same month and year, after a report of all of this was given to His Holiness, Pope Leo XIII, of blessed memory, Pontiff, the Most Holy Lord approved the response of the Most Eminent Fathers. I. CAN. MANCINI, Notary of the Sacred Roman and Universal

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Inquisition.

[*Latin ed. p. 697*]

FROM THE SACRED CONGREGATION OF THE ROMAN INQUISITION, DECREE 697, by which it is declared that the Priest Paul Miraglia and his accomplice have incurred again the greater excommunication. On Thursday, the 13th of June, 1900. It is declared that the Priest Paul Miraglia, from the diocese of Patti, but residing in Plasencia, having, for many and most grievous crimes and immense scandals, by which, with incredible audacity and obstinacy, he long afflicted the Church of Plasencia, having been, by the Decree of this Most Holy Congregation of the Holy Office, issued on Thursday, the 15th of April, 1896, after canonical warning, separated from the communion of the faithful. However, since no improvement resulted from this, but rather he has become worse day by day, and has shown the utmost audacity and perversity, having most recently attempted, with sacrilegious audacity, to have this same Paul Miraglia consecrated a Bishop, having brought him to Plasencia for this purpose by the heretical man Joseph-Renato Vilatte, who falsely claims the episcopal character, and having dared to publicly wear episcopal vestments and insignia, as if he were to be considered a true Bishop; this same Most Holy Congregation of the Holy Office, so that this crime may not remain unpunished, and so that the faithful may not suffer further scandal from the silence of legitimate authority, expressly declares that the aforementioned Priest Paul Miraglia and his accomplice Joseph-Renato Vilatte have incurred again the greater excommunication, according to the norms of the Constitution "Apostolicae Sedis," which is reserved in a special manner to the Supreme Pontiff, and this for multiple reasons; and it gravely warns the faithful to avoid them entirely. Given at Rome, from the Offices of the Holy Office, on the day, month, and year aforesaid. I. CAN. MANCINI, Secretary.

[*Latin ed. p. 698*]

698 FROM THE DOCUMENTS OF THE EXTRAORDINARY ECCLESIASTICAL COUNCIL. A petition from the Fathers of the Plenary Council of Latin America, presented to His Holiness Pope Leo XIII through the Congregation of Sacred Rites.

Most Blessed Father, the Archbishops and Bishops of Latin America, assembled in Plenary Council, most earnestly request: That Your Holiness deign to grant an indulgence of seven years to the faithful of Latin America, or those residing in Latin America, who shall recite the following prayer in honor of the Blessed Virgin Mary, Immaculate, together with the invocation of the Saints and Blesseds of the same Latin America, approved by the Sacred Congregation of Rites: *ACTIO ET PETITIO PRO FIDELIBUS ET POPULIS AMERICAE LATINAE* (Action and Petition for the Faithful and Peoples of Latin America).

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Gloria Patri, et Filio, et Spiritui Sancto, in saecula saeculorum. Amen.

"Te Deum laudamus, Patrem omnipotentem, qui caelos et terram creasti; Te Filium Iesum Christum, Dominum nostrum, qui pro nobis homines factus es, et pro salute mundi crucifixus es, et resurrectus es a mortuis; Te Spiritum Sanctum, Dominum et vivificantem, in nomine Patris et Filii et Spiritus Sancti. Amen." (We praise You, God, the Almighty Father, who created the heavens and the earth; You, Jesus Christ, our Lord, who were made flesh for us men, and for the salvation of the world, were crucified and rose again from the dead; You, the Holy Spirit, Lord and giver of life, in the name of the Father and the Son and the Holy Spirit. Amen.)

"Te Deum Patrem Ingenitum, Te Filium Unigenitum, Te Spiritum Sanctum Paraclitum, sanctam et individuam Trinitatem, toto corde confitemur, laudamus atque benedicimus: Tibi gloria in saecula: Tibi gratias in aeternum: confirma hoc, Deus, quod operatus es in nobis: salva nos et populos nostros." (We confess You, God the Father, unbegotten; You, the only-begotten Son; You, the Holy Spirit, the Paraclete; the Holy and undivided Trinity, we confess, praise, and bless with all our heart: To You glory forever; to You thanks forever: Confirm this, O God, which You have accomplished in us: Save us and our peoples.)

"Sit laus divino Cordi, per quod nobis parta salus: Ipsi gloria et honor in saecula." (Let praise be to the divine Heart, through which salvation has been granted to us: To Him glory and honor forever.)

"Cor Iesu sacratissimum, o Cor, voluptas coelitum, Cor, fida spes mortalium, Tui sumus, Tui esse volumus, salva nos et populos nostros; reconde nos in dulcissimo habitáculo caritatis tuae. Suavis enim es, Domine, et in aeternum misericordia tua. Parce igitur, o Cor Iesu suavissimum, parce civitatibus nostris, quae in fide Ecclesiae tuae enutritae, verae fidei thesau-" (Most Sacred Heart of Jesus, O Heart, delight of the heavens, Heart, faithful hope of mortals, we are yours, we wish to be yours, save us and our peoples; hide us in the sweetest dwelling of your charity. For You are sweet, O Lord, and forever is Your mercy. Therefore, O most sweet Heart of Jesus, spare our cities, which are nurtured in the faith of Your Church, the treasure of true faith.)

[*Latin ed. p. 699*]

FROM THE SACRED CANONS OF THE EXTRAORDINARY FATHERS, NUMBER 699: You, through your Author, have wonderfully preserved and guarded against all kinds of dangers. Therefore, O most Sacred Heart of Jesus, receive the prayers of thanksgiving from the clergy and people of the Latin American nations, who have been saved through the abundance of your benefits. O most Blessed Virgin Mary, preserved from original sin, most powerful Patroness of our Latin America, may praise be given to You perpetually, may veneration be eternal, may thanksgiving be offered to You in Christ Jesus. O immaculate Mother, O most benign Mother, O sweetest

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and most august Queen, we sing of Your mercies with grateful hearts. We take refuge under Your protection. O Lady, who captures the hearts of men with Your sweetness, You have captured our heart, You have captured the hearts of our people, You have strengthened and confirmed our first fruits of faith, through Your most benign presence and Your sweetest protection in Guadalupe (1) and other monuments of Your piety throughout our lands. O our Lady, our Mother, who crushed the serpent's head under Your virginal foot, deliver our people from the poisoned darts of the impious and heretics; and You, who were the Nurse and Educator of our people in the faith of Your most beloved Son, be also our Guardian, Defender, and Advocate. We are Yours, we wish to be Yours; show Yourself to be our Mother and our Patroness, protect us, save us through Your most powerful prayers. Most Holy Joseph, most chaste Spouse of the Virgin Mary, who has always been the Protector of Latin America, to You we offer praise and veneration in Christ Jesus. Guardian of Virgins, whom the joyful choirs of heaven celebrate, whom all choirs resound with hymns, intercede for us, receive our hearts, and offer them perpetually to the sweetest Heart of Your Spouse, the Immaculate One. We also invoke you, O Saints and Blessed ones, who have illuminated our lands with most holy works. Remember us, especially you, most blessed Thuribi, a splendid example and ornament of the Bishops and Synods of Latin America. Look upon us, O our Holy Protomartyr, Saint Philip of Jesus, who, exalted and glorified on the cross, became the master and instigator of the heralds of the Cross of Christ. (1) Here, the name of a Marian shrine in a nation or diocese of greater renown can be added.

[*Latin ed. p. 700*]

700 FROM THE HOLY CONGREGATION OF THE CHURCH, OUTSIDE THE ESTABLISHED ORDERS. Intercede for us, O Invincible Forty Martyrs, who, led by the Blessed Ignatius of Acevedo, dedicated and consecrated the people of Brazil to God with your own blood. Pray for us, illustrious Martyrs of Christ, Blessed Bartholomew Gutiérrez, Bartholomew Laurel, Peter Zuñiga, and Louis Florez, who adorned the churches of Latin America with the most precious crown of sanctity, like purple pearls. We also invoke your patronage, O Holy Francis of Solano, Peter Ciaver, and Louis Beltran, Apostles and Protectors of our America, as well as Blessed Sebastian of Aparicio, Martin of Porres, and John Massias, who wonderfully drew our people to Christ through apostolic virtues. Look upon us and pray for us, you also, Virgins of Christ, Saint Rose of Lima, Patroness of our America, and Blessed Mary Anne of Jesus, the most beautiful and radiant lilies, who delighted and sanctified all of Latin America with the wonderful display of your virtues. O Most Sacred Heart of Jesus, save our Republics, and their Supreme Magistrates, and all our peoples. And grant, O Lord, that they may be one in the unity of faith, in

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the love of their own country, in the zeal for the honor and safety of the common race, that is, of all of our Latin America. O Mary Immaculate, our Patroness and Safeguard, protect us, save us, unite our peoples in love for their own safety, unity, and common well-being, in the solemn profession of the Catholic faith. Amen. Moreover, the same Holy Congregation of Rites, on March 23, 1900, responded: "Concerning the Saints, nothing hinders; concerning the Blesseds, however, considering the particular circumstances of the matter, a special grace may be granted"; His Holiness graciously approved through the following Brief: LEO XIII, POPE. For the perpetual memory of the matter. Among the supports of religion, which the Venerable Brothers, Bishops of Latin America, suitably devised in their plenary council, held last year in this our beloved City, to increase the Catholic Faith in that most noble region day by day, prayers to God and to the Virgin Mary hold the first place.

[*Latin ed. p. 701*]

From the Sacred Congregation for Extraordinary Affairs, number 701, for the remission of sins and for the offering of prayers for the blessed in Heaven, especially for those who, through their sanctity, have illuminated America, earnestly imploring divine assistance for those faithful people. These pious prayers, approved by Our Sacred Congregation for the observance of rites, and of which a copy is preserved in the Tabularies of Our Secretariat, are entitled "Thanksgiving and Petition for the Faithful and Peoples of Latin America," beginning with the words "Glory to the Father, glory to the Son, glory to the Holy Spirit, world without end—Amen," and ending with "in solemn profession of the Catholic faith—Amen." Therefore, that the recitation of these very prayers may be spread far and wide, and may contribute to the greater good of souls, heeding the wishes of the aforementioned Venerable Brothers, We generously grant the aforementioned prayers to the heavenly treasures of the Church. Wherefore, confident in the mercy of Almighty God, and by the authority of the Blessed Apostles Peter and Paul, We grant to all and each of both sexes of the Christian faithful in Latin America, or residing in Latin America, who, at least with a contrite heart, have devoutly recited the same prayers mentioned above, a remission of seven years from the penitences prescribed to them, or whatever other debts they may have, according to the usual form of the Church; and We also grant that these remissions of penances may be applied to the souls of Christian faithful who, united with God in charity, have departed this life, as a form of suffrage. This applies to those who do the contrary, notwithstanding. These present decrees are to remain perpetually in force, with due regard to the true tenor of Our most recent Constitution concerning the suspension of indulgences this Jubilee year. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 3rd day of April, 1900, in the twenty-third year of Our Pontificate. For the Lord

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Cardinal, NICOLAUS MARINI, Substitute.

[*Latin ed. p. 702*]

702 FROM THE SACRED CONGREGATION FOR THE EASTERN CHURCHES, CONCERNING EXTRAORDINARY ECCLESIASTICAL MATTERS. The petition of the Fathers of the Plenary Council of Latin America, presented to the Most Holy Pope Leo XIII through the Sacred Congregation, is as follows: Most Blessed Father, the Archbishops and Bishops of Latin America, assembled in Plenary Council, considering the needs of their Dioceses, petition: I. That, given the difficulty of obtaining suitable candidates, all Parishes may be assigned a removable title; II. That Bishops may confer all Canonries *in officio* without concurrence, whenever they deem it expedient. May 4, 1900. -r The Sacred Congregation of Cardinals of the Council of Trent, by virtue of the powers specially granted to them by the Most Holy Pope Leo XIII, having considered the aforementioned petitions, has decided to respond as follows: Regarding I — It is desirable that, wherever possible, individual Ordinaries in their own dioceses confer, in certain principal Parishes, which are endowed with priests of mature age, of proven life, and possessing not common knowledge and piety, a title *ad tramitem iuris* according to the ordinary rule, – for example, for a period of ten years, so that all other Parishes, and even those mentioned above, if a prudent judgment of the Ordinary deems it necessary, may be assigned without concurrence and at the discretion of the Ordinary, always preserving the privileges granted by the Apostolic See, and taking care that Bishops use the power of transferring or removing Parish priests only with moderation and for just cause; and that the consciences of these same Bishops be burdened with this. Regarding II — For example, according to the request, for a period of ten years. A. CARD. DI PIETRO, Prefect. f B. ARCHIEPISCOPUS NAZIANZENUS, Secretary.

[*Latin ed. p. 703*]

FROM THE SUPREME SACRED CONGREGATION FOR THE GOVERNMENT OF THE CHURCH, EXTRAORDINARY, 705 INSTRUCTION concerning the Assemblies of Bishops in Latin America. Most Reverend and Venerable Lord. Since it has been seen to contribute greatly to the best governance of ecclesiastical provinces and to the edification of the faithful, the Most Reverend Fathers of the Plenary Council of Latin America, recently happily concluded in the City, through articles 208 and 288, recognized the usefulness and necessity of episcopal assemblies, which for Brazil, through a letter of July 2, 1894, had been most strongly recommended by Our Most Holy Father, Pope Leo XIII, by divine providence. Furthermore, the Most Blessed Father, to whom it is supremely dear that abundant and firm fruits be derived from the aforementioned

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Plenary Council, in order to more suitably determine the manner of these episcopal assemblies, has decided upon the following, and has ordered that they be made known to all Ordinarys in Latin America, namely: I. Every third year, or more frequently if necessity or opportunity arises, all the Bishops of each ecclesiastical province shall meet together, to act jointly on the common affairs of their Churches. II. The Metropolitan shall designate the place for the first assembly; in the future, the assembly of Bishops itself shall determine the place for each subsequent occasion. III. The Metropolitan shall convene and preside over the episcopal assembly, and, in his absence, the senior in the ecclesiastical hierarchy. A secretary shall be appointed, whom the Bishops shall designate by their vote. IV. The following matters are to be especially proposed to those who will be deliberating, so that difficulties and excuses that might arise against the religious observance of all the decrees of the Plenary Council may be effectively eliminated; and also, so that negligence in such observance may be courageously and gently corrected. In particular, every effort must be made to ensure that, everywhere, the practices decreed in the Plenary Council concerning the conversion of the Indians to the faith and their instruction in Christian precepts and moral uprightness are effectively put into practice. Furthermore, attention must be given to urging priests to diligently study the languages of the indigenous peoples, so that they may be made capable for the salutary work of the missions.

[*Latin ed. p. 704*]

704 FROM THE MOST HOLY CONGREGATION FOR ECCLESIASTICAL AFFAIRS, CONCERNING EXTRAORDINARY MATTERS: It pertains to the matter of the appointment of pastors; then, to the unfortunate delay in the baptism of infants, in the countryside or in places where priests are lacking; then, to the correction of the negligence of pastors regarding the sick, especially those in the countryside, who must be nourished with the Holy Eucharist; finally, to other matters of this kind, which, for the glory of God and the salvation of souls, seem necessary or useful to Bishops, for them to consider with zeal and prudence. V. The propositions and opinions of the assembly of Bishops, and especially the serious difficulties which may arise in the execution and observance of one or another decree of the Plenary Council, must be accurately reported to the Holy See, as is fitting, observing the rule prescribed in article 995 of the same Plenary Council. VI. The acts of such episcopal assemblies should be drawn up in the briefest possible form; and if any resolutions or prescriptions seem to be communicated to the clergy or the faithful, this can be done by means of circular letters or a common pastoral letter, also drawn up in a concise form. Moreover, His Holiness is very confident that, through the concord and solicitude of all the Bishops of Latin America, joyous fruits will result from these assemblies for religion and the state, with God's help. These orders

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and desires of the Most Blessed Father, while I signify to Your Eminence the duties of my office, I pray from Rome for all blessings and prosperity from the Lord, from the Secretariat of State, on the first day of May, 1900. Most devotedly, M. CARD. RAMPOLLA.

[*Latin ed. p. 705*]

705 FROM THE HOLY CONGREGATION FOR THE CULT OF MARTYRS AND THE PROTECTION OF ECCLESIASTICAL RIGHTS. January 27, 1900. Session 25, Chapter 9, Concerning Patronage. SUMMARY OF THE CASE. Julian Ghetti, of Mutilano, in the laudatory testament published on January 26, 1628, established seven canonries in the Church dedicated to Saint Stephen, Pope and Martyr, which at that time was a Collegiate Church, but which was later elevated to the dignity of a Cathedral by letters issued by Pope Pius IX, of blessed memory, on July 7, 1850. The testator ordered that all the institutions established by him should be subject to the right of patronage; and he granted the active right of patronage to the Prior, for the time being, of said Church (who today holds the first dignity in the Cathedral Church); and he reserved the passive right of patronage, only with regard to one of the canonries established by him, namely, that which he had endowed with a special endowment, and with the title of Praepositura (today the second dignity in the Cathedral Chapter), for the descendants of the families of Ghetti expressly named, subject to certain conditions, as follows: "He ordered and commanded that one of the family of the Ghetti, namely, first from the house of Julius, then formerly of Francis, then of John, brothers among themselves, and sons of the former Ghetti of Ghetti, and in the event that none of them are available, that one should be chosen from the house and family of Alexander, formerly of Annibal, of the said Ghetti, declaring that suitability is understood to mean that he must have the legitimate age to receive the minor orders, with the ability to celebrate Masses, to which he will be obligated by virtue of this testament, by another who is a Canon of the Ghetti family: he must be chosen to attain the dignity of Praepositus." (Acta, Vol. XXXII, page 384).

[*Latin ed. p. 706*]

706 FROM THE HOLY GENERAL COUNCIL, and for his revenues and his portion, he ought to possess all the goods of the aforementioned testament, etc." The execution of the testamentary will appears to have proceeded peacefully until the year 1858; in that year, on May 7th, when the position of Prefect became vacant by the death of the Prefect, the Prior, exercising his right of active patronage, presented Angelus Savelli, a canon, to the benefice. This canon was not in any way descended from the family of Ghetti. Therefore, Petrus and Felix Ghetti, descended through the male line from Ioannes Ghetti of Ghetti, the third, called by the testator, appealed to

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the Curia of Mutilanen for the vindication of their right of passive patronage. The question, for legitimate judicial determination, as it seemed, was then brought before the civil tribunal of the place – Rocca S. Cassiano. From this came a judgment (which, not having been appealed, passed into final judgment) awarding the right of passive patronage to the plaintiffs, the Ghetti family, since they belonged to the family to which the right of patronage had been granted, against the presentation of the canon, Savelli, who was contumacious; and therefore, his presentation was declared invalid and null. As a result, the position of Prefect was conferred upon Iosephus Ghetti, son of Felix; but he, having entered into marriage before receiving Holy Orders, relinquished the benefice. The vacant position of Prefect was then held by Antonius Ghetti, son of Assumptus, the brother-in-law of Felix, and therefore the father of Iosephus, who had previously obtained the position of Prefect. On October 24, 1897, Antonius Ghetti, the Prefect, died. Therefore, the Prior, the Patron, presented to the Prelate of Mutilanen, for canonical institution in the vacant dignity, Umbertus Ghetti, cleric, son of Augusti Ghetti and Ginevrae Mazzotti, aged 24 years, a nephew by the brother of the late Prefect. But, after being announced by an edict affixed to the doors of the Church, Maria, the widow of Iosephus Ghetti, who resides in the town of Rocca S. Cassiano, immediately opposed and objected to the presentation of the aforementioned cleric, Umbertus, before the Episcopal curia, for the sake of her son, Alberto, who is still a minor, being ten and five years old, and for whose guardianship she is responsible. The mother is now the Patron.

[*Latin ed. p. 707*]

MUTILANA 707: He had presented his son, Albert, who, like Umbert Ghetti, was presented by John Ghetti de Ghettis, the testator, in third place, and was of an age deemed "safe," as the testator states, to legitimately aspire to the minor orders. Furthermore, Albert, presented by the same John Ghetti, is of the same degree as Umbert; the cleric presented, who is Albert's grandfather, Felix, was the brother of Assumpt Ghetti; indeed, Umbert's grandfather, who was presented by the Patron, was also of that family. The mother of his son asserted the suitability of her son for the vacant benefice, presenting documents which prove his docile nature, his progress in schools, and his exemplary conduct; she also presented a judgment rendered by the local Tribunal of Rocca S. Cassiano on July 30, 1859, in which Joseph Ghetti, Albert's father, asserted the same right against an outsider presented, namely, Canon Savelli. This judgment, in truth, is relevant to our case only to the extent that it proves the origin of the claims made by the common ancestor, Ghetti, the testator; but today, a different question is raised, namely, whether Albert is acting against an outsider, but rather seeks to remove his own relative from the benefice so that he may take his place. The Curia of Mutilana did not reject Albert's petition, since Albert

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himself was found to be a capable and, indeed, very suitable candidate for the clerical state, and a young man of the best hopes; but primarily because a reason for doubt arose concerning the will of the testator, who seemed to favor Albert. It should be noted that the testator, in his will, first called upon three families, and then ordered that they should alternately enjoy the passive right of patronage. For he "ordered and commanded that one of those families of the Ghettis should always be created, namely, first from the house of Julius, then formerly of Francis, then of John, brothers to each other and sons of the former Ghetti of the Ghettis." The question then arose whether this alternating call should be observed equally in each family, just as it was observed among the families first called. If this is admitted, then this time the presentation pertains to Albert.

[*Latin ed. p. 708*]

708 FROM the decrees of the Holy General Council, having rejected Umberto; since Anthony Ghetti, the most recent Prefect, was the son of Assumpti Ghetti, grandson of the cleric Umberto presented [for the position], and because he now returns to the family of Felix (brother of Assumpti), grandson of Albert, the enjoyment of the passive patronage right. This pertains to the merits of the matter. - In concreto, however, the Curia strongly doubts the suitability of Umberto presented for the vacant Prefecture. For he has already been marked with clerical status and tonsure for many years, and having now reached the age of twenty-four, he is considered worthy to be canonically instituted for the attainment of a benefice, the second highest position in the cathedral chapter; and the Curia seems to doubt this. Therefore, two questions appear to be proposed regarding this controversy, which the Curia itself, in all respects, wished to submit to the prudent judgment of the Holy Congregation of Councils. First, it is asked: "Whether the alternative prescribed by the testator regarding the passive patronage right between the three first-named branches of the family must also be observed between families arising from one branch expressly named in the case." If the answer to this is negative; secondly, it is asked: "Whether the presentation made is to be admitted in this case." Regarding the first question, it must be noted that it is not in doubt that the three brothers Ghetti, called by the testator to the passive patronage right, were called in an alternating order; for he ordered and commanded that one of them, namely, from the house of Julius, should always be created first; then, at one time, Francis, then John, the brothers, in turn. The words, indeed, are so clear and evident that they require no interpretation, according to what is said by the mouths of the pragmatists: "clear words do not admit of interpretation, nor of conjecture of the will." Today, those who oppose themselves in this controversy are only those who derive their origin from one of the brothers called by the testator, namely, from John; but from the documents, it is not clear whether the two remaining families, namely,

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Julius and Francis, also expressly called by the testator, are extinct or non-existent.

[*Latin ed. p. 709*]

709. Let there be a man skilled or suitable who may enjoy or desire the right of passive patronage. This is also noted in the informative letters of Ouria. Since these things are so, the state of the question is now clear. It is not a matter of interpreting the very words used by the testator, but of carefully examining and investigating the will and intention of the testator, so that it may be clear whether there is a basis for extending or prolonging the will from one case to another. For the testator made no mention of the reason and order by which the descendants from the three designated families should be called as active patrons, whether, considering the different lines descending from a single root, each line in turn should have the right to the right of passive patronage, just as such a right was expressly granted by the testator to the three families initially called. Therefore, it must be inquired whether this "extension of the will from one case to another is consistent with the legitimate rules of law, and whether it can be admitted without prejudice to the certain and established right of the Active Patron."

A Synopsis of Disputation: In order to interpret the will of the testator, the following rules are commonly given by the Doctors: Mascardi in I. III, de probat. Conci. 1136 writes: "What is named by the testator is not expressed, it must be presumed to be omitted, and it should not be taken as expressed: for the testator is not presumed to will anything other than what he has expressed in words: and even if he speaks strictly, he must be understood strictly: especially when it is not said in the will that what is meant is not found when the will is read: for the testator does not speak, nor is he presumed to will, nor is the will retained in his heart." The reason for this is that with the death of the testator, the will being confirmed, no one can add anything or change it: for the law says, as it is written, so let it be: but its tenor must be observed to the letter. And Conci. 1280, n. 8 states: "The disposition of the testator must be observed according to the law, just as the law itself is not understood to be."

[*Latin ed. p. 710*]

710 "Excepta exceptione, si aliter exprimitur, ita etiam voluntas testantis non debet intelligi mutata et revocata, nisi hoc manifestum sit, saltem legitimis coniecturis." Praeterea, Concilium 1416, n. 20, addit: "Tempus conditi testamenti inspici debet, quia, quod eo tempore voluit testator semper velle praesumitur." Cardinalis De Luca, in operibus "Theatrum veritatis et iustitiae", in libro de Fideicibus, disputatio 39, n. 7, dicit: "Ubi testator non dixit, nos dicere neque supplere debemus, nisi gravia urgeant adminicula: ex recepto principio, ut quoties coniecturata voluntas non urget, non detur extensio dispositionis de casu ad casum." Et infra, disputatio 117, n.

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8, annotat: "Ad metiendam dispositionis voluntatem attendendum non est tempus praesens in quo successionis tempus aperitur, et quid interim casus praebuerit, sed attendendus est status rerum de tempore testamenti et quid testator cogitaverit seu voluerit." Hae regulae, et aliae multae, generatim sic traditae, suas quoque, singulae, patiuntur exceptiones ab ipsis auctoribus ulterius relatas. Ita, idem Mascardi, Concilium 1136, addit limitationem n. 8: "Limitanda est conclusio, ut si locus sibi non vindicet, quando verisimile esset, quod si testator de casu omisso cogitasset, idem quoque de eo disposuisset, nam tunc casus omissus, non praesumitur consulta omissus, et dispositio testatoris porrigeretur ad casum ab ipso non cogitatum, nec in testamento expressum." Et n. 16: "Limitatur conclusio ut vera non sit, ubi testator unum casum expressit, verisimiliter existimans alium non esse eventurum: alioquin illum etiam expressisset; tunc enim non praesumitur hunc consulto omisisse: hinc fit ut testator eum casum expressisset, qui ut plurimum evenire consueverit, non sit praesumendus illum velle excludere, in quo subest eadem ratio et sequitur idem effectus." Et Concilium 1416, n. 21: "Limitatur conclusio ut procedat rebus sic stantibus, sed si nova causa superveniret, voluntas mutata praesumitur."

[*Latin ed. p. 711*]

MUTILANA 711 And Cardinal De Luca, in *De Fideic. disc.* 115, paragraphs 9 and 10, teaches that the prohibition against extending the will from case to case and from person to person, based on the identity of reason and other considerations, is limited when the case or person to whom the extension is made can, in some way, be understood or contained within the scope of the will, so that it cannot be said that the case is certainly new and omitted. "Furthermore, regarding another prohibitive rule of supplementation, since we must serve the will more than the words, and it often happens that testators, disturbed in thought, or oppressed by illness, speak or write less than they intend, therefore the rule of supplementation also enters into consideration, which imports more intention than extension." These rules and the limitations of these rules are confirmed by both De Luca and by authors in general through the decisions of the Rota. In this matter, these rules, if properly understood, seem to demonstrate that there is no room for extending the will from a case expressly mentioned to a case not expressly mentioned. For the words used by the testator in making a bequest, while on the one hand clearly establishing a passive patronage right among three designated families Ghetti with an alternating order among themselves, on the other hand, no less clearly indicate the intention of the testator himself in granting this liberality. Indeed, Julian, in the donation mentioned above, undoubtedly intended two things. First, to benefit his family by granting the right of passive patronage. Second, since there were three branches of his family, whom he equally desired to benefit, and since, with unlimited freedom in choosing, he could have unduly favored one while denying the

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right to the others, hence the prudent provision for reserving the order of presentation of men descended from one branch or the other. However, while, on the one hand, this excessive freedom of patronage is somewhat restricted by the testator's prescription, on the other hand, it is not so removed or reduced to nothing that the right of active patronage should be considered entirely void.

[*Latin ed. p. 712*]

712 FROM THE HOLY GENERAL COUNCIL. For, if the testator's counsel, by limiting the Patrons' right through an alternative, restricts the scope of the provision, it nevertheless leaves the choice to the Patron within the lines originating from each individual branch: which is clearly and openly deduced from the very words of the testator: "he ordered and commanded that one must always be created from the family, etc." What this formula means is explained by jurists, as taught by Cardinal De Luca in *De Fideicisis*, sections 33 and 55, namely that the Patron, although not having free will or the power to be restricted to a certain kind or certain manner, still has the power to choose within the specified group of people, and thus to benefit one or more, while excluding others, according to the meaning of the text, as noted in I, *Unum de familia*, sections of the laws concerning testaments. This law, in section 2, states: "Therefore, if, for example, there were three from the family of the one who left the inheritance, it will be sufficient (that is, it is indifferent) to leave it to one; for after the division, the others fail to meet the condition." And the same De Luca, in I, *de lurep.*, section 45, number 3, states: "Where the law of the foundation, in the passive patrimonial right, does not call for the closest degree, but only commands that someone from the family or from a certain group be presented, it is said to correctly fulfill the law of the foundation by presenting one from the group, since it is sufficient not to go outside the defined group, according to the provision in I, *Unum de familia*, sections of the laws concerning testaments." Ferraris, in *Bibliotheca Canonica*, word "familia," number 32: "When the founder, in the passive patrimonial right, calls for those from the family in a general sense, it is considered that the founder has left it to the Patron to choose whomever he wishes, without regard to the closeness or remoteness of the degree." The same author confirms this with words quoted from Cardinal De Luca. But someone might object that the current state of affairs is greatly changed, because only one of the three expressly named families seems to still be valid. It cannot be admitted that descendants of Giulio and Francis Ghetti, first and second in the testament, could so easily have sent a message.

[*Latin ed. p. 713*]

MUTILAN, from the year 713, possessed the right of passive patronage; if, indeed, they still existed among the living, especially today, in this great

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upheaval of public affairs; in this fierce struggle in which citizens are urged to secure the necessities of life for themselves. Therefore, it must be said that these families have been utterly extinguished. For this reason, so that the will of the testator may not be rendered void with regard to the alternative provision, this must be considered among the various branches of a single surviving family.

However, from this very difficulty, the axiom immediately comes to mind: "Where the law does not distinguish, neither should we distinguish." Furthermore, the law teaches us, in Rule 85 of the 6th book, that contractual obligations, as well as legacies and gifts received in the acquisition of inheritances, are to be compared with the laws regarding the manner of imposing the obligation: "Contracts are understood to derive their force from the law." And rightly so: for just as laws, if they are to be understood and explained too subtly, and are affected by an expansive or restrictive interpretation, are completely undone, so too must testamentary and contractual obligations be understood and executed according to the natural sense of the words; and an extension or restriction of the natural meaning, namely *epicheia*, must only be made if it does not lead to absurdity.

In this matter, an absurd interpretation seems to follow if the extension of alternatives from one case to another is admitted. For there is nothing more abhorrent in the law than that which, by its very nature, derogates from the general rule. Indeed, when a certain case is expressly and specifically stated as a limitation for one case, a general limitation regarding other cases, not expressly mentioned, is excluded, so that an extension from one case to another is only legally possible when a certain general limitation is established, which may affect all uses, but which, through the natural evolution of things, may apply first to one case and then to another. Thus, the limitations established by the doctors concerning the aforementioned rule, namely, that an extension from one case to another is not admitted, must be understood. As De Luca teaches in *De Fideicommissis*, D. 115.

[*Latin ed. p. 714*]

714 From the decree of the Sacred Council, number 11, it is noted: "Therefore, it seems to pertain more to the matter than to the law, and it does not possess a completely certain and definite rule, unless when, in a case where the will is merely obscure and ambiguous, it is necessary to proceed only with general rules and propositions; otherwise, when special circumstances are present, which should always prevail over such generalities." Therefore, a specific limitation expressly imposed regarding the families initially mentioned by the testator excludes a general limitation regarding different families that may arise from individual branches. This interpretation is wonderfully confirmed by custom, the best interpreter of laws. For in the execution of this legacy, the case which is now being de-

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bated has certainly occurred several times, but no one has ever contended for such a limitation regarding the right of presentation. - Finally, even when the local tribunal of Rocca S. Cassiano vindicated the passive right to the family originating from Ghetti and John, two members of this family were present to assert this right; nevertheless, the possibility of a choice between them was not considered, nor did it even occur to the judges or the parties. - Nor has this issue ever been raised; on the contrary, there exist records of agreements reached between the parties or judicial sentences. Indeed, if we are dealing with a doubtful case, it is not unknown that continued observance over a long period of time contains the force of legitimate custom. Thus, Menochius, *Consilia*, 104, number 13: "The interpretation adopted by observance is valid and probable." And *Consilia*, 148, number 36: "That interpretation is true which is derived from practice." And in *Institutiones*, book 2, chapter 23 ff., regarding laws: "The interpretation approved by custom is the best." Cardinal De Luca, in *Institutiones de Legatis*, discourse 56, number 10, says: "Moreover, the strong support of long-standing observance, for a period of years, is very important: (for legacies) which, in all ambiguous cases, is the best interpreter, and the queen of interpretations; and beyond general knowledge, in specific terms of interpreting legacies, the truth and substance are confirmed by the subsequent implementation thereof... as in the Roman law concerning legacies, 28 ia."

[*Latin ed. p. 715*]

MUTILANA 715, November. 1658, before Celso, among his decrees, no. 271. - "But if, on the contrary, we are dealing with a clear matter, as the words of the legate clearly indicate, then adherence to the case, rather than interpreting the will, is required, since in clear cases, interpretation is not necessary, but rather a specific action is prescribed: as the Most Reverend Cardinal De Luca clearly states in I de Canon. disc. 2, no. 7: 'Interpretation applies to ambiguous and entirely doubtful matters; otherwise, in clear cases, where the scope of interpretation does not extend. Therefore, in such a case, adherence is not considered interpretative, but rather requires the necessary requisites for a formal prescription, according to the most accepted distinction, as stated in decree 319, page 6, reverse.' Therefore, from every point of view, the insistence on maintaining an alternative between different lines of the same family expressly named by the testator appears to be unacceptable. Indeed, even admitting that a doubtful matter is being considered, it cannot be said that continuous adherence has placed the matter outside the realm of doubt; nevertheless, there are certain principles of law that guide us in the proper resolution of this matter. For, according to rule 30 of the Institutes, 'In obscure cases, the least is to be followed'; but it must be understood that the least implies the least prejudice, either to certain laws or to certain rights. Indeed, the patron claims a certain right,

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which is the right to present one of the families of the Ghetto; and it is not permissible to take away or prohibit this right from him unless a certain limitation or prohibition has been established by the testator. Nor can the peaceful possession of the patron, for as long as it has been continuously maintained with respect to the free exercise of presenting one of the families of the Ghetto, provided that it originates from the brothers of the Ghetto named by the testator and with the alternative order maintained among them, be disturbed by simple reasons for doubt, even if they have some basis; since rule 65 of the Institutes states: 'In equal causes, the condition of the possessor is preferred'; and all the more so in doubtful and obscure cases. Finally, there remains the question of the second doubt: whether the presentation that has been made should be admitted. - If, indeed, it is not..."

[*Latin ed. p. 716*]

716 From the decrees of the Council, a response emerges, and the very presentation itself becomes the subject of debate. For this presentation to be valid, it must fulfill certain conditions. The patron, as Reiffenstuel teaches in Book III, On Canon Law, Title 38, paragraph 67: "is entitled to do so in such a way that, if he presents a suitable cleric, the Bishop or other official to whom the institution pertains is obligated to admit him and to institute him in the benefice, and this is a common and certain rule." And further, in paragraph 71: "No one can be presented for a benefice unless, at the time of the presentation, he is worthy and capable, that is, possessing all the necessary qualities, and lacking any quality that would render him incapable or unworthy." From the Doctors, it can be gathered who is considered worthy for benefices, namely, he "in whom no quality truly lacks, whether it be required by the nature of the ecclesiastical office, by common law, by special law, or by the foundation, or by privilege, or by custom, or by statute." Schmalz, in the same place, paragraphs 168 and following, with agreement. Therefore, the Bishop, having these and other rules before his eyes, judges according to his own judgment and conscience whether he should admit or whether he can lawfully reject the cleric presented by the patron. With these considerations in mind, the following questions were proposed: I. Whether the alternative prescribed by the testator regarding passive patronage between the three first-called branches of a family must also be observed between families arising from one branch expressly called in the case. And, to the extent that it is negative. II. Whether the presentation made is to be admitted in the case. RESOLUTION. The Holy Congregation, after deliberation on January 27, 1900, decided to respond: To I. Negatively. To II. Let him use his right.

[*Latin ed. p. 717*]

717 BURGOS. RESIDENCES. On January 27th and April 7th, 1900. Ses-

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sion 24, chapter 2, concerning Resignations. The Reverend Joseph Madrid Manso, who held a canonry in the Cathedral Church of Palencia, resigned from that position, and in the Cathedral Church of Burgos, he obtained another canonry, effective from 1896. However, Canon Madrid, who, it is said, did not enjoy good health while residing in Palencia, experienced a worsening of his illness in the city of Burgos, apparently due to the unfavorable climate. Physicians report that he suffered from a gastrointestinal ailment. Nevertheless, he resided in Burgos for two years, namely until 1898, when he decided not to return and, in the meantime, he made efforts to exchange his benefice. He succeeded in doing so and now enjoys another canonry in Palencia. However, the question remains: Canon Madrid, among the Burgos canons, regarding the time during which he held the Burgos benefice; for he asserts that he was compelled to absent himself for some time due to illness, but the Burgos canons deny this; and therefore, they deprived Madrid of the benefits of that position. This is what Madrid now repeats, concerning the matter of the controversy. For the purpose of this record, the following should be noted: On October 14th, 1897, in order to take advantage of the five months of leave granted to him in this chapter, Madrid departed from the city of Burgos, being severely afflicted by illness, and went to Palencia to be with his brother. While still residing in Palencia, and gradually recovering from his illness, Canon Madrid, especially with the advice of physicians, who asserted that he had contracted the illness primarily in Burgos and that it had worsened there due to the unfavorable climate, on December 3rd, 1897, petitioned the Sacred Congregation [Consilium] to grant him an indulgence for absence from the choir and from his residence due to illness. The Archbishop issued a decree, but... SUMMARY OF THE FACTS.

[*Latin ed. p. 718*]

718 From the General Council, a contradictory decree was issued; therefore, the Sacred Congregation responded on May 23, 1898: "It is not advisable." However, the canon was again appointed. In the meantime, he presented medical attestations, translated from Spanish into Latin.

Dominicus Epiphanius Gómez Población, holding licenses in medicine and surgery, stated: "I attest, and I would submit an oath if it should prove necessary: that the Reverend Joseph Madrid Manso, Canon of the Metropolitan Church of Burgos, while residing in this city of Palencia, enjoyed habitual good health; but at the present time, since he was appointed to the canonry and moved to the place he now occupies, certain disorders – gastrointestinal – began to manifest in him.

"This infirmity seemed to originate from the time the sick man was transferred to this place of residence; and indeed, as soon as the sick man almost recovered, he immediately returned to his residence in the canonry, and there again the infirmity recurred with greater intensity, and all remedies

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proved ineffective. This infirmity has certainly now reached a serious state, manifesting a true gastrointestinal dyspepsia, which, as the undersigned believes, is aggravated by the waters of that place; for which reason I have frequently advised him to remain in Burgos, if it were possible, for as long as he could; and now, in good faith, I solemnly attest that it is not advisable for him to reside in the aforementioned place, unless he seriously compromises the restoration of his normal health; and for the truth of which, wherever it may be, I subscribe these presents. In Palencia, on the third day of August, in the year one thousand eight hundred and ninety-seven."

The Reverend Perfectus Ruiz Lopez, Physician of the Hospital of Burgos, stated: "I attest, and I would submit an oath if it should prove necessary: That the Reverend Joseph Madrid Manso, Canon of this Metropolitan Church, has already for a long time..."

[*Latin ed. p. 719*]

BURGOS. In the year 719, he suffered from a catarrhal, gastro-intestinal illness, the manifestations of which recurred frequently, but always exhibiting the same characteristics, which could easily be alleviated if the afflicted person were to change their residence and return to Palencia, where he had stayed several times, and where he suffered from the same illness, but not continuously, but at limited intervals; now, however, this intestinal infirmity is intensified, and common digestive problems arise. But, since this illness could take on a chronic form in the patient, with even serious subsequent effects, we recall that among the truly effective and certainly causative factors of gastric flux, those originating from atmospheric influences hold a prominent place, due to the pressure that cold exerts against the stomach. It is necessary to add to these causes another, no less notable and important one, which arises from the consumption of water, the intake of which notably affects those afflicted, as the aforementioned water, by incommoding the digestion of whatever is ingested into the stomach, preserves and increases a certain morbid predisposition, where it exists. Furthermore, considering that this illness, thus formed, usually finds a connection when its originating cause is altered, and, conversely, it increases and worsens when the same causes that produced it persist, the aforementioned person is, out of absolute necessity, advised to change his residence and the city in which he lives, temporarily, in order to accurately achieve his own health. "In witness whereof, that he may be in good health, I sign these letters with my own hand, in Burgos, on the twelfth day of August, in the year one thousand eight hundred and ninety-seven." Firmín López, Doctor of Medicine and Surgery, testified to this.

[*Latin ed. p. 720*]

720 FROM THE HOLY GENERAL COUNCIL: "I attest that on the aforementioned date, at a medical consultation held with the Reverend Father

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Epifanio Gomez Población, Doctor of Medicine, within the same Faculty of Medicine, concerning the patient, the Reverend Joseph Madrid Manso, Canon of this Metropolitan Church of Burgos, who has suffered from a notable illness for some time. After a thorough examination of the patient's medical history and a careful questioning, we have determined that the cause of his infirmity is, without a doubt, a gastrointestinal catarrh, and that the only factor we can identify is his residence in Burgos, whose cold climate has undoubtedly influenced the patient's pathological condition. For this reason, I have added my own opinion to the recommendation of the patient's physician, and it was agreed by both of us that the best course of action is to advise the patient to avoid residing in Burgos, as it is certain and sufficiently proven that this place is detrimental to his health." "To attest to this, I have signed these letters with my own hand, on the paper below, in Palencia, on the fifteenth day of December, in the year one thousand eight hundred and ninety-eight." Several Burgalese physicians have testified as follows: "We attest that we have, on various occasions and at distinct intervals, provided medical assistance to the Reverend Joseph Madrid, Canon of this Metropolitan Church, due to his frequent suffering from gastrointestinal dyspepsia, accompanied by pain, frequent and excessive bowel movements, and poorly digested food. Indeed, no effective remedy has been tried that has not been attempted, but always without success, and always with a negative outcome; however, the patient has been free from this infirmity when he traveled to another city, and as long as he remained there; but the pain, along with the symptoms characteristic of the illness, returned when the patient returned to his own city."

[*Latin ed. p. 721*]

BURGOS. In the year 1898, the patient began to suffer from ailments; therefore, having considered the matter, it became clear that the patient's illness was dependent on the climatic conditions of this city, whether we examine the waters or consider the nourishment, the influence of which is evident from experience. "Having explained this, it seemed advisable to the physicians to advise the Reverend Joseph Madrid to, if possible, move his residence and establish a permanent home in another location, if he wished to avoid further or even more serious or fatal consequences." "To attest to this, we have signed these present letters with our own hands, in Burgos, on the twenty-sixth day of December, in the year one thousand eight hundred and ninety-eight." Epiphanius Gómez Población, Doctor of Palencia, acting as physician, reported the following: "I testify: that the Reverend Joseph Madrid Manso, Canon of the Metropolitan Church of Burgos, to whom I have provided medical assistance for ten years, enjoyed good health until he was appointed to the canonry; during that time, four years ago, he was compelled, for the sake of the canonry, to move his residence to Burgos. After a short period of residence, he began to suffer more frequently from cer-

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tain gastrointestinal pains, which the therapeutic treatments administered by the physicians there were unable to correct or prevent; hence, driven by necessity, he returned to this place, and here, he was freed from that severe pain not many days later and regained his usual health. "It is certain that, whenever the Reverend undertakes a residence here, this will happen again: within a period of about six months, the illness will become very severe; and since Madrid remains in Burgos, I have warned him that he cannot remain in this place, because the cause of the illness, which has now turned into gastrointestinal dyspepsia, is the climatic differences."

[*Latin ed. p. 722*]

722 From the positions of that city in the General Council, it was more evident. Until the present time, after Madrid had resided for a long period in this city, the aforementioned gastro-intestinal pains were repeated on different journeys made through Burgos, one of which occurred at the end of February, and another in the month of November, which truly confirms the above; and in my judgment, the patient's state of health and his residence in Burgos are by no means compatible, besides the very serious harm that could certainly befall him. "In Palencia, on the fifteenth day of December, in the year one thousand eight hundred and ninety-eight." During the delays in the controversy, the Canon Madrid obtained a benefice in the Church of Palencia, as reported by the Archbishop in a letter dated April 8, 1899. Since Madrid observed the law of residence in the years 1896-1897, he was deprived of the fruits due to him because of the lack of residence from the year 1898. The amount to which these fruits, which the plaintiff claims and the canons deny, amount is not specified in the records. In this regard, the Archbishop wrote in a letter dated April 8, 1899: "The practice of this Chapter, which I consider commendable, is that those who have been absent from the choir for seven or more months in a year should receive nothing on those days, and that on other days they should receive the full fruits. But neither in the statutes of this Church, nor in the rules of the choir, is it expressed for what purposes the money that the absent person does not receive should be applied; nor has the practice been always the same: now, without even consulting me, the canons have equally distributed among themselves the sum of money that was not to be given to the Lord Joseph Madrid. However, I believe it would be more in accordance with the spirit of the Council of Trent that this sum should have been distributed to the poor of the place or to the Church Fabric, except for daily distributions." To the plaintiff's insistence on such a serious infirmity, the Archbishop added "these things are true." The Chapter, in its vote, states that it has distributed individually.

[*Latin ed. p. 723*]

BÜRGEN. 723 All the beneficial fruits, to which Privas was entitled, were

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distributed according to the custom of the chapter. Synopsis of the Dispute. DEFENSE OF THE CANON OF MADRID. The Canon of Madrid asserted, even through his appointed procurator, that he had, through medical attestations, not only proven the validity of his claim to exemption, but also that he had made himself available to undergo a judicial examination by physicians appointed by the chapter; however, this was rejected by the canons, who proceeded to the point that, while the matter was pending before the Sacred Congregation, they decreed that the Canon of Madrid be deprived of Privas and its revenues. Furthermore, the Council of Trent, in Session 24, Decree XII, states: "Moreover, those who hold dignities, canonries, prebends, or portions in the same cathedrals or collegiate churches, are not permitted, by virtue of any statute or custom, to be absent from those churches for more than three months in any year; saving, nevertheless, the constitutions of those churches which require a longer period of service; otherwise, in the first year, each one shall be deprived of half of the fruits which he has earned by reason of the prebend and residence. And if the same negligence occurs again, he shall be deprived of all the fruits which he has earned in the same year. And if there is increasing obstinacy, proceedings shall be taken against them, according to the constitutions of the Sacred Canons." Furthermore, according to the disposition of Fagnanus, De praebendis, Canon 25, it is stated: "Moreover, although those who are absent should not receive the fruits of their prebends, this should not be understood as meaning that they lose them by right; but rather, it should be understood that they are to be deprived of them according to the prescription of the Council of Trent, in Canon 12, Session 24, where it is established that those who are absent for longer than the time permitted shall, in the first year, be deprived of half of the fruits which they have earned by reason of the prebend and residence. And if the same negligence occurs again..."

[*Latin ed. p. 724*]

724 The negligence of the Sacred Council deprives all of the fruits they might have gained in the same year; but, should obstinacy increase against them, proceed according to the Constitutions of the Sacred Canons, that is, to the deprivation of office." The testimonies of Doctors Epiphanius of Poblacion and Firmin Lopez, under oath, are corroborated, the advocate stated, by the assertions of the Client himself, who is endowed with the greatest honesty and exceptional moral integrity. Indeed, these virtues of the Client, and all that he has done, are declared in the Brief which the Supreme Pontiff sent to the Client on the thirtieth day of August in the year 1887, and which contains the following: "While those who are blinded by the darkness of error strive to elevate false beliefs and to attack the Catholic faith and the Christian religion, there is nothing more to be desired than that the children of light should vigorously demonstrate themselves as defenders of justice and advocates for the salvation of souls. Such is

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the case with Joseph Madrid Manso, a Priest of Palencia, whom we know and are pleased to acknowledge, who is accustomed to face difficulties with an unwavering spirit, and who employs all commendable means to promote the glory of God and the salvation of his neighbors. Through his generosity and foresight, schools have been opened for the Christian education of young people, libraries have been prepared to cultivate the minds of the young, circles have been established to foster charity among workers, and to encourage piety, Christian instruction is given to children, and lessons are held in sacred literature or in excellent books." The aforementioned virtues of the Client, and the aforementioned things accomplished by him, are confirmed, the advocate insists, by the Most Eminent Rampolla in Uteris, who wrote to the Client on August 31, 1887. Finally, the advocate presents the witness, Father Thomas Rodriguez, General of the Order of the Eremites of Saint Augustine. And he says: "Knowing well the Reverend Canon D. Joseph Madrid Manso, formerly a canon of the Metropolitan Church of Burgos and now a canon of the Cathedral of Palencia, I can attest that I consider him to be of exemplary integrity, and therefore, given his previous conduct, incapable of..."

[*Latin ed. p. 725*]

BURGOS. 725. *Fingere* una malattia che non avesse veramente avuta, per allontanarsi da Burgos e non intervenire al servizio corale, *con pregiudizio della propria coscienza*.

Il difensore sostiene che l'affermazione e l'intenzione del Canonic Manso sono conformi alla verità e alla giustizia, e che il Capitolo stesso ha dimostrato chiaramente ciò, poiché ha rifiutato di inviare i propri esperti medici per esaminare il Canonic, come aveva richiesto insistentemente.

DIFESA DEL CAPITOLO.

Il Capitolo afferma innanzitutto che non è conforme alla verità che il Canonic di Madrid sia stato affetto da un disturbo in Burgos, a danno di sé stesso; poiché egli ha informato i suoi colleghi di diversi problemi che lo affliggevano, anche quando era Canonic di Palencia. Inoltre, in Burgos, la sua condotta non è peggiorata: poiché è stato in grado di adempiere correttamente a tutti i suoi doveri canonici.

È evidente, dalle testimonianze che si leggono, che i medici hanno espresso opinioni apertamente contrastanti tra loro.

L'avvocato della parte avversa sostiene che il disturbo del Canonic di Madrid fornisce una giusta ragione per la sua assenza dal coro: poiché, sebbene il titolo III sui chierici che non risiedono affermi che le distribuzioni quotidiane vengono date solo a coloro che sono presenti e partecipano alle funzioni divine, ad eccezione di coloro che sono affetti da infermità, ecc., tuttavia, il disturbo di cui si discute non giustifica l'assenza del Canonic

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che è in grado di celebrare la Messa, recitare l'ufficio divino e compiere frequenti visite.

Tuttavia, per unanime consenso e consiglio del Capitolo, è stata espressa una delibera contraria al Canonic di Madrid. Infatti, è consuetudine nella nostra cattedrale e in altre chiese, non solo di non concedere le distribuzioni ai presenti, ma anche di privare il beneficiato dei frutti della sua prebenda, qualora non presenti una scusa sufficiente per la sua prolungata assenza, al di là dei limiti concessi.

Questa nostra consuetudine non è in contrasto con la legge tridentina, che viene scrupolosamente osservata nel capitolo 2, della seconda sessione, del Concilio di Trento, *De Reformatione*, dove si afferma: "salvi tamen consuetudinibus earum Ecclesiarum, in quibus..." (salvaguardando tuttavia le consuetudini di quelle chiese, in cui...).

[*Latin ed. p. 726*]

726 From the Sacred General Council, those who do not reside, or who do not serve, receive no portion, or less than one-third. Finally, considering the matter in its entirety, it was noted, as a matter of duty, that the Assessors of the causes in the Sacred Congregation of the Council seemed to have responded – and not without reason – to the request, because the petitioner did not seek any delay from the requirement of residence, while a serious infirmity pressed upon him, but rather he absolutely and without any condition sought to be declared exempt from the law of residence forever, due to his infirmity.

Indeed, that such an exemption is contrary to the office of a canon and to the duty of the Sacred Congregation of the Council, no one can deny. Furthermore, the canonical laws of Madrid, clearly established by the Decretal Law in title "De clericis non residentiales" – as well as the Council of Trent, Session 24, chapter 2, "De ref." – stand in opposition to the petition. Therefore, the common law prevails, and it remains in force until it is certainly established that there is a legitimate cause for absence, and in these circumstances, the titular canon must at least be served by a substitute or coadjutor. Furthermore, it is the practice of the Sacred Congregation of the Council to require sworn attestations from physicians: *Regestum Indulti*, December 14, 1850, § Constans.

Nevertheless, in this matter, it seems that the petitioner's request should be favored, because infirmity excuses from residence, as is evident, and so that no further affliction may be added to the afflicted, as natural law commands, the daily distributions are not withheld from the infirm. Indeed, the Sacred Congregation of the Council has interpreted the mind of the Council of Trent, and has decreed not once, but repeatedly, that the fruits should not be taken away from a canon who is illegally absent, before it is clearly demonstrated by a condemning judgment of a judge that the absence is unlawful; thus, García reports, part 2, *De beneficiis*, chapter 2,

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numbers 151, 152, according to the Roman Registry in the case of Cauzien, *Fructuum coram D'Orano*, April 10, 1592. Barbosa, chapter 70, *De canonicis*, number 22. Nor can this natural benevolence be delayed, let alone hindered, by the opposition of canons and others who have an interest, which, when the infirmity or legitimate impediment to residence is proven, is considered unjust and unreasonable, as testified by the resolution of the Sacred Congregation of the Council in the case of Piscien, *Indulti*.

[*Latin ed. p. 727*]

BÜRGEN. 727, 6 December 1760; vacant due to the choir, 23 July 1764, and in Caserta, permission to be absent granted on 16 December 1797. – Furthermore, just as it is not permissible by equity that one who has contracted a disease and has become unfit for service, or even for residence, should be compelled to resign the benefice; so neither is another required to be compelled by substitution to serve or to reside, as the Sacred Congregation of Rites declared in the aforementioned Decrees, 23 July 1764. Having these things in mind, the following question was proposed for consideration: Whether the daily distributions and the fruits of the benefice, from which the Canon of Madrid had been deprived, should be restored in this case. RESOLUTION. The Sacred Congregation, after deliberation on 7 April 1900, decided to respond: Affirmative in all respects. BURDIGALENSIS. NULLITY OF MARRIAGE, 7 April 1900. Session 24, Chapter 1, Concerning the Validity of Marriage. Concerning the validity of the marriage, which, fourteen years ago, Mauritius had contracted with Iosephina in the city of Burdigala, this matter had already been debated in the plenary assemblies of June of the year 1895. The question was whether the sentence of the Burdigalensis Tribunal, which had declared this marriage to be valid and binding, should be confirmed or rejected; to which the Sacred Congregation decided to respond: "The sentence is to be confirmed." Since the man, alleging new circumstances, has obtained the benefit of a new hearing, this cause returns to be debated in the present assemblies. SUMMARY OF THE CASE.

[*Latin ed. p. 728*]

728. Mauritius, while engaged in business with his father in the city of Bordeaux, frequently visited the home of George Eugene, also of that city, who was likewise engaged in commerce. And it happened that he began to desire Josephine, the most beautiful daughter of Eugene, and resolved to marry her as soon as possible. "Miss Josephine," he said, "possessed a captivating appearance; I believed that through this marriage I would secure my happiness, as well as a prosperous future; therefore, I decided." Thus, on January 12, 1886, after a preliminary civil marriage, Mauritius and Josephine, both being 21 years of age, entered into a legitimate marriage, according to the decrees of the Council of Trent, in the church of Notre

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Dame in the city of Bordeaux. But with a most unfortunate outcome! If we are to believe the words of Mauritius, even before the marriage, Josephine did not show him any affection, but rather displayed signs of sadness before him, even accumulating contempt and reproach against him. The reason was that Josephine had married him against her will, due to the imperious will of her parents, while she harbored a very strong affection for another. "I yielded to the obsessions of my father, and of my mother, but, know this, my heart is in Paris. I love Mr. Ostermayer... and my heart is faithful to him." These were the words of Josephine, as reported by Mauritius himself. — And although, at his urging, she later consummated the marriage, she did so not out of affection, but merely to satisfy her duty. "The marriage," Mauritius also recounts, "was consummated approximately twelve days after the celebration of the marriage (twelve days of resistance on the part of the wife), and after the consummation of the marriage, she said to me: 'You have had me in the flesh, but you will not have me in the heart. I still love Mr. Ostermayer...'" While traveling in Nice, she abandoned him all day long, "and she never wanted, as Mauritius recounts, to tell me what she had done all day"; nor did she hesitate to tell other women that they were more fortunate than she, because they prostituted their bodies. But after the wedding trip was completed, she left nothing unattempted to make him miserable.

[*Latin ed. p. 729*]

BORDEAUX. In the year 729, he attempted to extort a sum of money from his father. But this was in vain. Then Mauritius learned that his father had forced his daughter into marriage, hoping to alleviate the difficulties of his family's affairs. Hence, more serious disagreements arose between the spouses. Joseph, as the man asserts, did not hesitate to reveal his past faults to her, and she left him three times, and finally, after four months, she fled to the island of Cazaux to her parents; and in the year 1887, as she had wished, she obtained a divorce. Three years after the divorce decree, Mauritius approached the Archbishop of Bordeaux, also requesting that no marriage be declared valid, since it had been forced on the part of the bride. After the process was initiated, the Archbishop of Bordeaux sent letters to the Archiepiscopal Court of the city of Buenos Aires, where the bride, along with her father, who had lost his fortune, had moved, requesting that she be questioned by a delegated judge regarding her marriage. However, the Court of Buenos Aires was unaware of the woman's whereabouts, and therefore, she was summoned in vain. Then, the judge of Bordeaux and the defender of the marriage requested to visit the mother's house, with the promise that the daughter would be present when the Court arrived. But when, once again, the woman did not comply, by order of the Sacred Congregation of the Council, the Court of Bordeaux sent a peremptory summons to the home of Joseph's family, summoning Joseph

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and his parents, who, not appearing on the appointed day, were declared contumacious. Mauritius reports that Eugenius forbade his daughter to testify unless Mauritius himself paid a large sum of money. As a result of this, since Joseph did not comply, the Court of Bordeaux declared the marriage valid. Mauritius immediately appealed to the Sacred Congregation of the Council: and while the appeal was pending, when Joseph returned to France, she was properly invited again to appear in court; but she again refused. The Sacred Congregation of the Council upheld the judgment of the Court of Bordeaux, and on June 22, 1895, it responded: "the sentence is to be 'confirmed'." This response could not please Mauritius: hence,

[*Latin ed. p. 730*]

730 From the Sacred Congregation [of the Holy Office], a petition was presented concerning a benefit granted to him, which had been previously conceded. He maintained that he had not properly questioned the witnesses. Some of these, either for this very reason, or because they feared Eugene, had not fully revealed what they knew about the incident, when giving their testimony. Other witnesses, and those of greater importance, whom it was necessary to question, were also present. Moreover, since Eugene had at that time emigrated to another city, those who had been silent out of fear could now speak freely. The Sacred Congregation ordered the Archbishop to initiate a new process, and, after summoning Iosepha, to question her according to the norms of law. Then, an unexpected event occurred. For Iosepha, who after the divorce had entered into a union with a military officer, inflamed by a shameful passion, upon reading the first edict, at the urging of her lover, wrote to the Archbishop of Bordeaux and announced that she would soon travel from Russia, where she resided, to France. And on the appointed day, she swore that she had been forced and falsely led to the marriage.

A SYNOPTIC DISCUSSION: DEFENSE OF THE MAN. Mauricius's advocate divided his argument into three main points. First, he argued that a marriage is invalid if it is celebrated falsely or under duress. He then showed what must be proven to establish the existence of duress, and what must be proven to establish the existence of simulation. Second, he argued that Iosepha had been coerced. Third, he argued that she had falsely married Mauricius. Regarding the first point, he cited legal authorities to show that marriages contracted under duress are invalid. This is primarily established by the canon laws themselves. "Marriage... is contracted solely by consent; and where this is questioned, it must enjoy full security, so that the mind of the person may be investigated, lest, through fear, he say that he pleases when he hates" (Alexander III, in cap. Cum locum, 4 de spons. V., cap. Veniens 13 and cap. Consultationi tuae 28 of the same title; also in

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cap. Significavit, 2. de eo qui duxit in mat.). And rightly so;

[*Latin ed. p. 731*]

BURDIGALEN. Indeed, just as other agreements are dissolved by the force of fear, so too must marriages be declared invalid which cannot be dissolved; "otherwise, no good would be done to the innocent [Church]" (Gaspari, *Tractatus de Matrimonio*, edition altera, vol. 2, cap. 5, n. 811, p. 37). Thus, Mansella, *De Impedimentis Matrimonii*, part. 1, cap. 1, art. IV, n. 2, p. 13. This is even more so because marriage represents a free union of Christ with the Church, and because it often engenders countless evils through coercion. (Panormitanus, cap. 14, *De Sponsis*, § 6; Sánchez, *De Sacramento Matrimonii*, lib. IV, disp. 12, § 18). But not every fear is sufficient to invalidate a marriage; rather, only a grave fear, arising from a free cause, unjust, and directed at extorting consent. "And this canonical rule is most certain and accepted by all." (Gasparri, op. cit., n. 822, vol. II, p. 47).

Furthermore, regarding the gravity of fear, a certain defender of Mauricius notes. He demonstrates that the gravity of the fear should not be judged solely by the violence of those who inflict the fear, nor by the blows themselves: for liberty is diminished, even if violence and blows are absent. He proves this from the words in *Capitula de Sponsis*, V, supra, n. 9; from Coscio, *De Separatione Torquentium*, cap. VIII, §§ 79, 93, 95, pp. 41, 43; from the *Rotal*, in Colimbria, before Buratto, on December 19, 1614, decree 643, § 13, p. 1, *rec.*; from the *Rotal*, before Bevilacqua in Rome, concerning nullity of marriage, on May 24, 1655, p. XII, decree 23, n. 6, *rec.*; and in Vercelli, on December 11, 1669, before Bevilacqua, p. XVI, decree 38, § 1, *rec.*, where it is demonstrated that in marriage, simple consent is not sufficient, but rather full liberty and security are required.

"Therefore, grave fear is a grave disturbance of the mind, which is verified when a serious evil is imminent or future for that person..." (Gasparri, op. cit., § 814, p. 39, vol. II). Thus, threats suffice without blows, indeed, even coercion suffices without threats, which is not treated with impunity. (Sánchez, op. cit., lib. IV, disp. VI, § 12, vol. I, p. 375, and disp. VII, § 5 and 7; Pirhing, *Ius Canonicum*, lib. IV, tit. 1, sec. IV, § 5, Pontius).

[*Latin ed. p. 732*]

732 From the Fourth Session of the Council of Trent, chapter 5, paragraph 17, concerning marriage; from Gasparri, *opus*, chapter 1, paragraph 815; and from the Rota in the aforementioned case, paragraph 2. Furthermore, the advocate argues that one who simulates [consent] in marriage does not act differently than one who enters into an invalid marriage; and, after citing words from Mansella and Coscio (*op. cit.*), he specifically proves this from Périès (*Codex proceduræ canonicae in causis matrimonialibus*, page 11, section 11, title XVIII, article 359 and following), who observes

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that one may simulate in one of two ways: either by simulating in such a way that, while the marriage is being celebrated, one does not intend to enter into the marriage with a sincere mind; or by simulating in such a way that one does not wish to impose upon oneself the obligations of marriage; or, finally, by simulating in such a way that one does not reject the obligations, but refuses to fulfill them. If the first case occurs, the marriage is invalid; if the second case occurs, it is also invalid; if the third case occurs, the one who simulates is to be condemned, but is bound by the marriage. Indeed, in the first case, there is no consent, and "where consent is lacking, the substance of the contract is lacking" (Mansella, *op. cit.*, *loc. cit.*); in the second case, there is consent in appearance, but dissent in reality: for a marriage cannot be conceived without the intention of fulfilling conjugal duties (Gasparri, *op. cit.*, *loc. cit.*, n. 802); but in the third case, there does not appear to be a conflict with the nature of marriage, for one intends to be obligated to do something, and does not intend to refrain from fulfilling it (Sánchez, *op. cit.*, book II, section XXIX, n. 11, volume II). Therefore, the advocate concludes that in order for a marriage to be valid, it must be proven that the will differed from the words when one of the spouses was making promises, and this must be proven clearly; that is, one of the two aforementioned cases must be proven to have occurred. In the second section, the advocate, with eloquent words, argues that the marriage between Maurice and Josephine was contracted under duress, and is therefore invalid. And he presents this primarily through the testimony of the woman herself. — Josephine, under oath, states: "... It was very important for the interests of my father to have the support of Mr. Maurice and his son... My father absolutely wanted my consent. He acted upon me through intimidation. He often told me: if you do not consent to this marriage, I will commit suicide, I will take laudanum. You will make me die of sorrow. He often took a re-..."

[*Latin ed. p. 733*]

BORDEAUX. 755 "Je me suis retournée, comme si je voulais me nuire moi-même. Mes parents m'ont enfermée dans une chambre, craignant que je ne m'enfuie. Je me disais qu'une fois mariée, je ferais ce que je voudrais, ayant la volonté de me débarrasser de ce mariage... Au moment du mariage civil, j'ai même beaucoup hésité avant de signer ; mais mon père était là qui dominait, et de plus, je craignais le scandale d'un refus public... Pour le mariage religieux, j'étais dans la même disposition. Le jour du mariage, j'ai refusé l'entrée de Maurice dans ma chambre, et après le mariage, je me refusais le plus souvent à mes devoirs de femme..." — À partir de ces paroles, l'orateur conclut : si Josèphe a réellement dit cela, il est manifestement clair qu'il n'y a pas eu de mariage valide. En effet, Josèphe avoue qu'elle s'est mariée à Maurice sous la contrainte de la peur. Or, cette peur est causée par une source extérieure, c'est-à-dire par un homme, en l'occurrence, son père.

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Ceci est injuste, car il est interdit de forcer un enfant à se marier. Ceci est grave, car des menaces ont été proférées. Ceci est une forme de contrainte pour obtenir son consentement ; cela est évident. Ainsi, tout concourt à rendre le mariage invalide en raison de cette peur. Après cela, la défense a soulevé certaines difficultés qui semblent contredire la gravité de cette peur. On pourrait objecter que, en raison de cette peur, Josèphe n'a pas pu être gravement affectée. La défense répond que, tout d'abord, il y a eu des prières importunes, et les prières importunes sont comparables à la peur ; ensuite, il y a eu des menaces, et des menaces telles que même le plus courageux des hommes ne pourrait y résister. "Je me suiciderai", disait le père ; "je prendrai du laudanum". De plus, "il prenait souvent un revolver comme s'il voulait le pointer contre lui". En outre, Josèphe a été retenue en captivité, afin qu'elle ne s'enfuie pas. On pourrait encore objecter que ce mal incombe au père, et non à Josèphe. Cependant, les maux qui ne nous affectent pas directement ne peuvent pas nous bouleverser profondément. La défense répond que ce que nous craignons nous affecte beaucoup plus et plus gravement que ce qui ne nous affecte pas. Car, ils soutiennent,

[*Latin ed. p. 734*]

734 FROM THE DECREES OF THE COUNCIL, all those things are considered grave which not only concern us, but also parents, relatives, affine relations, household members, and even tenants. Furthermore, Josephina herself feared that, if she were not married, she would be in danger, lest her father be prepared to kill her and act cruelly towards her daughter. But, is it believable that the father would seriously carry out all that he was saying? The defender of Mauritius replies that the father of Josephina was so constantly driven by violence that such an act would undoubtedly be committed by him. And all the witnesses confirm this with one voice: "Mr. Ve is a violent man, carried away, authoritarian, without faith or law; brutal, so brutal that he sometimes fought with his workers." Therefore, it is not surprising that he might have used force and violence against his daughter if she contradicted him, or that he might have been driven to infamy if he were not restrained. To prove that Josephina has spoken the truth, the advocate recalls the time when she testified in Bordeaux. At the beginning of the case, she repeatedly disregarded both letters and edicts. Even while the trial was pending before the Sacred Congregation, Josephina could not be persuaded to speak. Therefore, the judgment regarding the validity of the marriage could not be made, because it was not based on fear. Indeed, if she did not abhor perjury, there was no reason why she should have remained silent for so long. Therefore, if she now stated what she had previously refused to say, it is clear that her conscience had been stirred, and that she had acted in order to secure her own future. And she herself affirms this: "for the peace of my conscience..." Furthermore, when Josephina was affirming this before the Archbishop of Bordeaux, she was weeping; and

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in this case, her tears demonstrated the truth. Therefore, the judge of that diocese stated: "The answers given by the woman were... sincere, truthful. The last answer was accompanied by tears, which were not feigned or simulated, but which flowed spontaneously." Someone says: Therefore, Josephina remained silent because Mauritius paid money. No, replies the advocate; because Mauritius possesses exceptional integrity, and a singular piety: which witnesses and the judge of Bordeaux himself affirm. Furthermore, Mauritius himself revealed this to the judge; indeed, would he have revealed this if he intended to corrupt his wife? He always prepares snares in secret.

[*Latin ed. p. 735*]

BORDEAUX. Year 755. Furthermore; if he wished to provide a dowry for his wife, why did he not previously calculate the amount he was prepared to give? Why did he despise her prayers because she had not received a dowry, and why is the testimony of the wife now being sought in this new investigation? After the testimony of Josephine, the defender of Maurice presents the depositions of witnesses, who assert that the woman was compelled to marry by threats from her father. "Whenever Mr. Maurice presented himself, Mr. Ve... received him very well, but he was obliged to push his daughter, even to force her, to bring her into the salon. The office of Mr. Ve... was close to the linen room where I was with Madame Gaillard, who is now deceased. I heard Mr. Ve... say to his daughter: 'You must marry Mr. Maurice. He has money. You alone can save our situation.' The daughter declared that she did not want this marriage. One day, Mr. Ve... said to his daughter, showing her a dagger: 'You see this dagger. If you refuse this marriage, I am capable of using it.' Another time, showing his daughter a bottle of Laudanum, Mr. Ve... said: 'If you refuse this marriage, I am capable of drinking the contents of this bottle.'" Thus testified Berta Lacoste, and also Joanna Giraud, Joanna Martin Anglade, Joanna Dejeanne, Laura Faydit, a nun, Mary Bourger, etc. These witnesses testified that the father had been vigilant to prevent his daughter from escaping. With these things established, Josephine should be believed; for it is right to agree with these witnesses. For we agree with witnesses rightly and justly, whose knowledge is not doubtful, whose faith cannot be impugned. It is certain that these knew what they had seen with their own eyes or heard with their own ears. And the trustworthiness of faith is confirmed by certain testimonies. An objection is raised: there are two witnesses who say that Josephine spontaneously agreed to the marriage. The advocate replies that this remains as he stated; although it is not two, but a hundred witnesses who are convinced. Indeed, it is clear that those who deny fear are based on opinion; and those who testify about a matter that has not occurred under their senses are based on this opinion. But on the contrary, those

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who testify to fear are certainly influenced by threats.

[*Latin ed. p. 736*]

.7*6 From the decrees of the Council; and from the facts that came to light, they best suggest fear. It is the axiom of Innocent, as Sánchez states in *Super hoc*, part 2, number 2, that two witnesses testifying to fear are to be believed more than a thousand witnesses testifying to spontaneous will. And the reason is because, when they testify to fear, they assert that they were able to perceive something with their bodily senses (loc. cit., book 4, dispute 27, section 1, page 429). The same is stated by other authors, including Mascardus. Then, not two, but several witnesses allege fear; on the contrary, neither a thousand, nor a hundred, but scarcely two have testified. And what they assert, they have no proof of. "It seems to me, etc.," are their words. You object: that the witnesses, when questioned in Bordeaux, did not previously relate what they now claim. Therefore, it is clear that they were not concerned; and they cannot be believed. - The advocate for Mauricius replies that the witnesses affirmed that they were questioned not properly, but hastily. That they, at that time, did not fully understand what the Inquisitor was asking. And finally, that they feared Joseph, who was then living in Bordeaux, and who, to those seeking their livelihood through labor, was about to cause harm, either openly or through calumny. Thus testified Berta Lacoste, Joanna Giraud, and Joanna Martin. And if the most excellent defender of the accused believes that these things were feigned by the witnesses, the advocate is confident that the truth will acquit them, not only through arguments, but through the clearest testimony of all. Through arguments: for the integrity of Mauricius has been observed by the entire city; and it is not fitting that he, whom all consider to be honest, should be accused of causing concern. To the entire city was known the violence of him from whom danger was impending; and it is not surprising that he, who was accustomed to become enraged to the point of madness, would avenge himself on young women. No one who has examined the summary will fail to notice the manner in which the Inquisitor first questioned the witnesses. And it is clear why they did not give full answers, since they were questioned in that manner. Or, perhaps, they omitted something out of prudence, which could be concealed without perjury. - Through testimony: that, both before the other investigation, and afterwards, the Inquisitor himself...

[*Latin ed. p. 737*]

Bordeaux. In the year 737, it was determined. Those who had previously inquired about the matter, considered it opportune to do so again; because credible witnesses had presented causes. And the Most Holy Congregation commended Maurice, who so earnestly presented the case; "The aforementioned, being honorable and Christian, acted in good faith by presenting

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new witnesses, and he did not influence them to give false testimony. The parish priest of a large parish sometimes seemed eager to conclude the proceedings. The word 'threats' must have been understood by the witnesses in the sense of threats against the person of the girl, threats of blows, of mistreatment, of death. They probably did not think of other threats, for example, those that Josephine's father allegedly made, threatening to kill himself... If the Most Holy Congregation permits the legal examination of the witnesses, the Ecclesiastical Court of Bordeaux does not object." Thus wrote Tourreau, vicar general, judge, and advocate. Afterwards, it was stated that the threats, which the witnesses had previously mentioned, were confirmed. "According to these new testimonies, of which several are much more explicit than the first, it is certain that the father made threats to his daughter in order to compel her to marry Mr. Maurice." After the testimonies of the witnesses were presented, the advocate proceeded to the evidence. "The evidence that can serve to prove that a marriage took place under the pressure of grave fear, consists of the following on the part of the woman: 1° her tears and lamentations before the marriage, at the time of its celebration, and in the days that followed; 2° her aversion to the husband, manifested before and after the marriage; 3° her reluctance to submit to the duties of marriage." Thus said Peresius, with whom Coscius concurred. Indeed; first, Josephine was in mourning before the wedding, and seemed to be in distress. The bride, however, could scarcely restrain her complaints and tears. "She seemed rather constrained and forced. She must have been crying, for she had very red eyes..." Thus said M. Roche, C. Montalier, L. Faydit, Suberville, and A. Faydit, who said: "While I was dressing her for the ceremony, she was sad, she was crying." Secondly, Josephine has consistently expressed aversion to Maurice. Thus it is written in the records, Volume XXXII, page 354, line 47.

[*Latin ed. p. 738*]

758 FROM the Council documents, it is stated that she, even rejecting the gifts offered by Maurice, and spurning any flatteries he might have uttered, responded in this manner: "The attitude of Mademoiselle Josephine towards her husband was full of ill-humor. She wanted to spit on the bouquet; but, as I myself turned the bouquet aside, the spittle fell upon my sleeve," the aforementioned witnesses report. And E. Montalier adds: "I witnessed in Salignac a brutal refusal by Mademoiselle Josephine to the gracious advances of her husband." Finally, Josephine, on several nights, prevented the man, desiring intercourse, from entering the marital bed. Afterwards, he did have intercourse with her, as the advocate states, but in a bestial manner, not as a husband and wife, and she immediately began to cry out that she detested him. Finally, four months after the marriage was celebrated, the husband left the house. And she refused to return to him. "In the evening, when Mr. Maurice wished to enter his wife's chamber,

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she cried out: 'Murderer!'" Thus, Berta La Coste. - "Upon their return to Bordeaux, her wife did not allow him into the marital chamber for about ten days." "Eight days after the couple had returned from the countryside, I said to the young bride: 'Well, are you happy?' - She replied: 'No. - I have not wanted to consummate the marriage,'" reports Joanna Giraud. "The marriage," adds Maurice, "was consummated approximately twelve days after the celebration of the marriage, twelve days of resistance on the part of the wife, and after the consummation of the marriage, she said to me: 'You have had me in the flesh, but you will not have me in the heart. I still love Mr. Ostermayer.'" Another indication, according to the advocate, is that Eugenius was working so hard with borrowed money that he was truly in a state of poverty. This, of course, clearly indicates why he entered into this marriage, and why he forced his daughter into it: "Her affairs were very precarious," the witnesses exclaimed in unison. Furthermore, the advocate insists, it is a significant indication that the wife, at a time when there was no suspicion, was deeply distressed by the fear she felt. And she did not lament this once, but a thousand times, not only to one person, but to many. And in the letters she wrote daily, she expressed her complaints.

[*Latin ed. p. 739*]

BORDEAUX. 739. "Elle me disait (avant le mariage) que mes parents voulaient me marier, mais que je ne voulais pas de ce mariage." D'autres témoins, également cités, confirment cette même chose. De plus, il existe une preuve que Josephina, à un moment où il n'y avait aucune suspicion, a réfléchi à la possibilité de se libérer du mariage. En effet, la fraude ne peut être conçue sans raison. Elle-même, à un moment où il n'y avait aucune suspicion, a clairement exprimé cette intention, d'abord à un conseiller spirituel, puis au curé. Bien sûr, elle n'a pas persisté dans cette intention, car son père a refusé de consentir au mariage, à moins qu'un prix ne soit payé. Enfin, dans le dernier chapitre, l'avocat de Mauritius affirme que Josephina a donné son consentement au mariage. Et cela est prouvé, entre autres, par les propres paroles de Josephina. Elle dit : "Une fois mariée, je ferais ce que je voudrais, ayant une volonté arrêtée de me débarrasser de ce mariage... Mon attitude (après le mariage) n'était pas bonne avec mon mari. Je me refusais le plus souvent à mes devoirs de femme, et j'avais toujours l'idée arrêtée de m'échapper à la première occasion, ce que j'ai fait à trois reprises. Et quand j'ai su que la loi du divorce était votée, j'ai résolu d'en profiter pour rompre ce mariage... Mon père m'a dit que si je ne pouvais pas m'habituer à la vie commune, il me ferait divorcer. Et cela non seulement après le mariage, mais encore huit jours avant." En effet, selon ce qui précède, le mariage, selon l'argumentation de l'avocat, est considéré comme fictif ; car Josephina soit n'avait pas l'intention de contracter le mariage, soit elle avait l'intention de ne pas se lier, dans les deux cas, le mariage est considéré comme fictif, et donc nul. Ce que Josephina affirme

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est confirmé, non seulement par de riches témoignages, mais aussi par des preuves non obscures.

OBSERVATIONS DU DÉFENSEUR DU SAINT UNION. D'un autre côté, le défenseur du mariage soutient qu'il faut se prononcer en faveur de la validité du mariage, car il n'y a aucune preuve de contrainte ou de simulation. Et il rappelle les sentences de la Curie de Bordeaux et de la Sainte Congrégation, selon lesquelles, après toutes les investigations judiciaires, la décision a été prise en faveur de la validité. Ces sentences ont été confirmées par...

[*Latin ed. p. 740*]

740 From the words of the Council, the mother of Josephina declared: "That her daughter had not been forced, and that she had freely married Mr. Maurice." Then, it is noted that, having obtained the benefit of a new hearing, Mauritius received depositions from 12 witnesses through a notary, among whom 8 had already been questioned in the initial judicial inquiry. Indeed, Clement V, chapter 2, in the Clementine De Testibus, states: "Since witnesses, once properly received, and their testimonies made public, it is not permissible to present other witnesses, or the same witnesses, concerning the same or directly contradictory matters, in the main cause, so too it should not be permissible in a cause of appeal: because, just as in the main cause, subornation is to be feared, so also in appeals." Therefore, a flaw is present in the second process. Recalling the course of events, the accuser of the marriage noted that Josephina greatly disliked this marriage. For she herself confessed: "This marriage flattered my self-esteem." And Susanne, daughter of Abraham, when questioned by the judge: "What were the feelings of Miss Josephine towards Mr. Maurice?" replied: "It seems to me that, in agreeing to the idea of a marriage with Mr. Maurice, Miss Josephine was primarily flattered to become the wife of a stockbroker." This is confirmed by Susanne's daughter, Mary Abraham, who, referring to the same judge's question, stated: "Miss Josephine showed me her engagement ring, and she herself said, with a certain pride: 'I am going to be the wife of a stockbroker in Bordeaux.'" Furthermore, before the marriage, Josephina had refused to go to the tribunal of penance. But, "upon the threat that I made to her, that I would not proceed with the marriage, she confessed." However, this is a sign that she was willing to go through with the marriage. Josephina wanted to celebrate the marriage not in the cathedral church, which would have been her parish church, but in the church of Notre Dame. But why? When questioned by several witnesses, Mauritius replied: "Because the Church of Notre Dame seemed more beautiful to her, and lent itself more to..."

[*Latin ed. p. 741*]

BURDIGALEN. 741, "qu'elle voulait y apparaître avec un air de reine." "Quis enim coactus ad nuptias procedit, haec omnia quaerit?" While the

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marriage was being celebrated, Iosephina gave her consent before the priest and witnesses in such a way that not even the slightest indication of coerced consent was revealed. When asked, "What do you know about how the bride responded to the Church, saying 'yes, I do,' and about her demeanor in the sacristy during the signing and upon leaving the church?" Mauritius replied plainly: "I noticed nothing particular." Thus, Maria Roche Faydit, Mauritius's sister; Maria Abraham, who was present at the marriage ceremony as a "bridesmaid"; and her mother, Susanna, all testified. These facts, when recounted, exclude any coercion and clearly proclaim a free and spontaneous marriage. If Iosephina had hated the marriage, would she not have equally hated the engagement, or at least refrained from the empty boasting of showing "with a certain pride" that "I am going to be the wife of a stockbroker!" Furthermore, these things are not sought after, but are rather resented. Moreover, the defender of the marriage cites a decision of the Sacred Roman Rota, before Ratto, decision 149, § 1, which states: "When a marriage is contracted, and during the very act of celebration, there is a free consent of both parties, all presumption must be made in favor of the validity of that marriage, and no consideration should be given to objections when they are not so compelling and effective as to immediately and conclusively demonstrate a presumed nullity, whether it arises from a lack of free consent or from another invalidating cause." As for the origin of the discord, according to the defender of the marriage, the blame is to be attributed not to Iosephina, but to Mauritius. If one listens to Iosephina's temperament and the adverse circumstances, including the misfortune that befell Iosephina's father during that time, these provided fuel for the discord between the spouses. But, on the other hand, the...

[*Latin ed. p. 742*]

742 FROM the records of the court of appeal of Burdigala, it appears that this matter was brought before Maurice. For he presented his case to the ecclesiastical judge, stating: "A decree of divorce was pronounced against me on the grounds of adultery and cruelty, but I do not consider myself guilty of either adultery or cruelty." And when the father of Josephine received a letter from the ecclesiastical judge on June 11, 1892, urging him to seek a declaration of nullity of the marriage on the grounds that "Josephine, being dominated by her father and mother, did not give a free consent," he responded to the judge, stating that "this is completely inaccurate; in fact, the only reasons, and the only true motives, are mentioned in the judgment of December 12, 1887, by the Court of Appeal of Bordeaux." After this judgment of the civil court, Josephine began to hope that the marriage would also be annulled by the ecclesiastical judge, and for this purpose, she first consulted with the parish priest of Bruges, the priest Peter Bonnet. Subsequently, the defender of the marriage sought to examine Josephine's testimony and demonstrated from the records that it was not obscurely

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evident that she had conceded to Maurice's judgment ten years later. She herself had also been urging Maurice to this end, as is evident from several letters. To what purpose does this pertain, the defender of the marriage asks? Let the witnesses be heard who testify: that Mr. Maurice gave fifty thousand francs. But even if it is granted that Maurice did not provide this sum, it is clearly established in our law, the defender argues, that neither spouse can be believed in this case, according to the explicit text in chapter 5, concerning those who are related by blood, etc. Coscius, in his work, book 2, chapter 18, paragraph 12, states: "Indeed, the confession of both spouses must be made, unless the impediment asserted is proven from another source, not only because of the suspicion of collusion, but also because such a confession is given not against, but in favor of the one confessing who wishes to be separated, to whom, therefore, it cannot be beneficial, whether it is the husband or the wife, or both together, if they have made it."

[*Latin ed. p. 743*]

BORDEAUX. In the year 745, this is noted [ibid.]. A gloss on the verb "Confessionem," stating that no one can be a witness in their own case. "L. Nullus 10 ff. De testibus, L. Omnibus 9, Cod, eod." Furthermore, Josephine, who affirms the impediment to marriage, exhibits a life and reputation that are not commendable. Almost all the witnesses condemn her, the least of which is "hypocrite, capricious, mendacious, and very false." However, Mauritius, whom the witnesses of the second inquiry widely describe as "too good," is entirely outside the matter in question and knows nothing otherwise. For, questioned by the judge, he replied: "I know nothing except through witnesses, and the witnesses will testify." Then, both Mauritius and Josephine hasten to correct their previous testimonies. Regarding the testimony of the witnesses, the defender demonstrates that the opposing party is lacking in any love of truth! Therefore, the defender concludes, it is clearly evident that here we are dealing with a system designed to correct the acts of the first inquiry; and all of this speaks for itself. It is therefore necessary to determine, of its own accord, what credence should be given to these witnesses, and whether one should adhere to the first or the second testimony. Meanwhile, the defender points out what Mauritius has stated concerning the Bordeaux court. Furthermore, he continues, it will not be irrelevant to recall that the witnesses, speaking with one voice, portray Josephine as a woman who is easily swayed by the will of her parents. But actions speak louder than words. From a young age, Josephine was subject to the fear of her parents. Aloysius Tabuteaux recounts: "I was in Paris in July 1881. After eight days, the police found (Josephine) in a hotel with a young painter. She was then between 15 and 16 years old." Berta Lacoste narrates: "The family, fearing that the future (Josephine) would leave the paternal home to escape this marriage, carefully locked the door of their

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daughter's room at night, and the father sometimes kept watch." But if the parents feared that Josephine would flee "to escape this marriage," they should have kept watch.

[*Latin ed. p. 744*]

744. Ex S. G. Concilio, non solum "aliquoties," sed omnibus omnino noctibus, imo etiam diu. Praeterea, instat Sacramenti orator, ex adverso contenditur quod "Iosepha nulli solebat nisi ex libidine parere... sed patrem violentiorem est sortita ad cuius nutum regebatur. Quaeque ceteris morigerari recusabat, illius metu, qui eam subegerat, frangebatur." Nam ipse animadvertit genus minarum cum testium dictis pugnare. Iosephinae enim pater seipsum occidere minabatur, non filiam. Qui autem hac ratione alium ad aliquid inducere vult, animi fortitudinem prodit vel imbecillitatem? Vim in alium et auctoritatem ostendit vel propriam impotentiam? - Deinde non credit, Iosephinam serio accepisse assertionem suicidii comminationem; si quid nihilosecius ex eo timendum ipsa habuisset, non aliter profecto id contingere potuisset, nisi supposito filiali erga patrem amore. Sed hic filialis amor ne concipi quidem potest cum facto, quod in incestuosa consuetudine patris cum filia consistit. Si enim velis, Iosephinam libere appetisse scelestissimam consuetudinem, nonne admittis, eam in tam profundam animi abiectionem promisse, ut incapax fieret amplius percipiendi delicatum et nobilem sensum amoris filialis? Si vero ponas coactam subiisse nefandum scelus, nonne dicis, filialem Iosephinae amorem in odium erga patrem verti debuisse? Numquid Iosephina heroina? Haec de metu. Ad alterum obiectionum caput quod pertinet, contendit Sacramenti defensor nullo modo simulatum fuisse consensum in matrimonium. Etenim, in primis, frustra in actis documenta quaereres, quibus coniectari saltem posset quaenam revera intercesserit amoris necessitudo Iosephinam inter et adv. Ostermayer, quem ipsa dicit deperire. Deinde ad alium virum necessitudinem suam adiungere ipsa appetebat, ad Michaelem nempe Couin, qui iurat: "Mlle Josephine était vicieuse. Elle m'a fait une fois des propositions immorales." Quando autem ipsum Mauritium,

[*Latin ed. p. 745*]

BURDIGALEN. Taking the first opportunity, she abandoned [her husband], perhaps to go to Ostermayer, a man who held her heart? You are mistaken; she returned to her father, under whose yoke she was held. She did not strive to have her marriage annulled with Ostermayer. Mauritius was still in her heart; she often wrote letters to him, as Michael Couin testifies. But Iosephina confesses: "I always had the firm idea of escaping... of getting rid of this marriage..." To this difficulty, the defender of marriage responds with the words of the Glossary in chapter 26, concerning betrothals: "If someone protests before many people that everything he will say or do will not be with the intention of entering into marriage, and afterwards publicly

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says: 'I consent to you,' is there a marriage here, or not? In this case, I say that the Church ought to judge that there is a marriage; because one must return to the common understanding of words... For such words cannot serve their intention: moreover, if it is proven that those words of protest were first uttered, he could afterwards withdraw from that intention and consent to it, and this is evident from what he afterwards did publicly: and if he says that at that time he was in the same intention, he is not believed, because the interpretation must be against him, because he is using deceit." Having briefly related these things from here and there, the purpose was to resolve the doubt as to whether one should adhere to or depart from the decisions in this case. RESOLUTION. The Sacred Congregation, after discussion on April 7, 1900, decided to respond: "It does not appear from the presented evidence that there is a nullity of the marriage, and one must adhere to the previous decisions."

[*Latin ed. p. 746*]

746 BASEL. IRREGULARITY. June 23, 1900. Through summary petitions. COMPENDIUM OF THE CASE. Among the documents presented to the Sacred Congregation of the Council in the meetings of April 7 of the current year, there was a petition from Joseph Stöger, of the diocese of Basel, requesting a dispensation from an irregularity contracted due to a defect in the left leg. However, the Eminences and Fathers considered it prudent to postpone their decision, in order to obtain more complete information from the Ordinary of the diocese. Following the mandates of the Holy Order, I wrote the following letter to the Bishop of Basel: "The Eminences and Fathers wish to know whether there was an error by the scribe in the words of the report of the Master of Ceremonies, in which he states that the cleric cannot bend his knee, and that he moves away almost five meters; for it is feared that he intended to express centimeters. Furthermore, it is fitting that Your Eminence request the opinion of a learned and Catholic doctor, who will express whether the weakness with which the cleric suffers in his legs may increase over time. Furthermore, from your report, it is not sufficiently clear whether the cleric is able to exercise the ministerial priesthood, namely, by preaching the word of God, administering the sacraments, instructing children, assisting the sick, etc., to the benefit of the faithful. Likewise, the Eminent Fathers wish to know whether there is any pious house or hospice where the cleric could offer the sacrifice privately without causing astonishment. It is feared that heretics might seize the opportunity presented by the promotion of this cleric to mock and despise the Catholic priesthood." In response to these requests, the Bishop wrote: "Following the example of Your Eminence's wishes, I present the following more detailed information regarding the case of irregularity due to a bodily defect – specifically, a weakness in the left leg – concerning which Joseph Stöger, a student of our

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seminary, recently requested a dispensation."

[*Latin ed. p. 747*]

BASILEEN. 747 "Firstly, concerning the measurement of the flexion, a mistake occurred in the written document; the scribe wrote 'five decimeters' instead of 'five centimeters.' Secondly, E. V. will find attached to this letter the opinion of a learned and Catholic doctor, who has known the candidate since his youth: from which it is understood that, in the case of the contraction and weakness of the muscles in the left leg and foot, which resulted from the typhoid fever with which the candidate suffered at the age of seven, there is no reason to fear that the functions of the foot will be more impaired in the future. "When walking, there is scarcely any noticeable limp; moreover, the candidate easily completes journeys of several leagues. Therefore, there is nothing to prevent him from serving the ministry of souls by preaching the word of God, instructing children, administering the sacraments, and assisting the sick. "Nor is it to be feared that, through the candidate's ordination, the Catholic religion will be held in contempt by heretics, or that the faithful will receive scandal from it. For such is the character of our people, that if integrity of life and zeal for souls are evident in a priest, they will readily forgive him, even if, due to a bodily defect, he perhaps performs some function with somewhat less decorum. Nevertheless, when choosing a candidate, consideration will always be given to the benefit of assigning him to a place where his ministry can be most easily protected from all contempt. "Finally, since the candidate is of good character, well versed in sacred knowledge, and endowed with a priestly spirit, it is strongly to be hoped, on the part of the diocese, that, through a grant of assistance, this Holy Congregation will help the candidate." The opinion of the aforementioned expert doctor is as follows: "The left leg has a circumference of 27 centimeters, compared to the right leg, which has a circumference of 42 centimeters, exhibiting a deficiency of 15 centimeters; moreover, the Achilles tendon on the left side is found to be notably contracted. Consequently, there is a slight dragging in the gait and a certain slowness in certain movements, e.g., when rising from a kneeling position. "The cause of these defects is not to be sought in disease."

[*Latin ed. p. 748*]

748 FROM THE HOLY GENERAL COUNCIL – concerning the central spinal cord, but it originates from a weakness of the muscles, which itself is a consequence of the typhoid fever, by which the aforementioned D. Stager was afflicted in his seventh year. Therefore, it is not to be considered that, as far as can be foreseen, the actual function will become worse over time. Furthermore, the impairment of function, even that which is now present, is not of such a nature as to easily appear. Having presented these matters, the question was asked as to what should be answered regarding the prayers.

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RESOLUTION. The Holy Congregation, having been informed on June 23, 1900, decided to respond: "For the granting of a dispensation, at the discretion and conscience of the Bishop, the following is stated: DISPENSATION FROM IRREGULARITY. June 23, 1900. Through summary prayers. SUMMARY OF THE CASE. The Bishop of Ivrea presented the following petition to the Most Holy Lord on March 13 of the current year: "Having found in the young Alessandro Domiziano, of the living Count Massimo Mola di Larisse di Fiorano, of this Diocese, evident signs of a vocation to the ecclesiastical state, in the last year, 1899, he admitted him to wear the clerical attire which he so strongly desired and requested. "However, endowed with uncommon intelligence and a most felicitous memory, he has very poor eyesight, and can only read with great difficulty, which his relatives believe may diminish over time. "Therefore, the petitioner supplicates to Your Excellency to know whether, if the young man's visual defect persists, he might, in due time, obtain, in order to be promoted to the priesthood, a Pontifical dispensation from the ordinary rite of the Calendar to celebrate the Mass of the Blessed Virgin Mary or a Requiem Mass."

[*Latin ed. p. 749*]

EPOREDIEN. 74: Recitare altre preghiere in luogo del Breviario; nel quale caso, e con la celebrazione della S. Messa, massime nei giorni festivi, e con l'esercizio del sacro Ministero, potrebbe essere di assai vantaggio al suo paese natio, dove non ha obbligo di residenza che un solo sacerdote, che è il Parroco ». Il medico, testimoniando ciò che il lodevole Vescovo ha aggiunto, afferma: « Il sottoscritto certifica che il detto giovane cavaliere Alessandro, è dotato di ottima forma scheletrica e regolare, e di sana e robusta costituzione fisica, e di squisiti i quattro sensi. Il senso visivo è però anormale, per cui, per difetto di trasposizione degli archi v i suali, non può ben distinguere oggetti minuti. Ma sia per la floridezza generale della salute, sia per la tendenza della natura fisica riparatrice, lo scrivente può assicurare che detta debolezza visiva non andrà mai oltre, anzi vi sono motivi fondati di sperare che, terminata la crescita del corpo, la lamentata acutezza visiva abbia da rinvigorirsi; dovendo a tal uopo notare che sani sono gli apparecchi diafani dell'occhio, come pure regolari le forme esterne ». Il medico attesta, che l'Oratore ha 21 anni. Disputa Sinottica. LA DISPENSA SEMBRA DA NEGARE. Dalla irregolarità non sembra poter essere dubitato in questo caso, poiché i santi Canoni dicono che è irregolare colui che, per debolezza, non può celebrare la Messa, e questo deve essere tenuto valido, come è stato ammesso dalla Sacra Congregazione C. in una Vercelli, il 28 luglio 1860, tra le Summaria Precum relata; in Colonia, il 13 settembre 1862. Infatti, in prima istanza, il chierico Egidius Ferraris, afflitto da semplice debolezza della facoltà visiva, chiese alla S. C. C. che gli fosse concesso di ricevere i sacri ordini, e che, nei giorni festivi, potesse celebrare la Messa votiva alla B. V. Maria, e negli altri giorni, la Messa dei defunti.

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Ma gli Ecc.mi PP. , dopo aver considerato tutto, risposero: « Non...»

[*Latin ed. p. 750*]

750 FROM THE DECREES OF THE COUNCIL OF TRENT: "It is permissible." - In another case, in Colonien, the matter concerned a cleric being promoted to the sacred orders, who, due to a weakness of the eyes, could scarcely distinguish things clearly; nevertheless, the response was: "Regarding the sacred orders, it is not permissible." In both cases, the Bishop strongly commended the orator's good character and the benefit that would accrue to the Church from their promotion. Similarly, in Carcassonne, on February 27, 1869, and in many other instances. - Furthermore, the matter concerns *promoting* rather than *being promoted*; indeed, the practice of the Sacred Congregation is to grant dispensations more easily when it concerns someone already promoted, than when it concerns promoting someone, as in the Decrees on Dispensations of May 16, 1775, and July 11, 1776, and in Naples, Irregularities, of September 13, 1814. A DISPENSATION SEEMS ADVISABLE. Nevertheless, the proven character, piety, and intelligence of the orator, which are so highly commended by the Bishop, deserve to be given the greatest consideration, especially in these times in which we lament the scarcity of priests everywhere. These factors can pave the way for grace even more, because the orator does not suffer from a weakness of the optic nerves to such an extent that he can scarcely distinguish light from darkness. Since the orator can see things, albeit not very distinctly or clearly, which healthy people see, it is not to be feared that the condition will worsen with time; for in this matter, there is a medical attestation which states: "That this weakness will not go beyond this point, and there are well-founded reasons to hope that, once the growth of the body is complete, the lamented acuity of vision will be restored." Moreover, there are further examples, of a more difficult nature, in which the Sacred Congregation deemed it appropriate to grant a dispensation. Thus, in Lavallen, Irregularities, of May 14, 1870, a dispensation was granted to the cleric Edward Privet, of the diocese of Lavallen, who, due to a weakness of the eyes, was unable in any way to read the Sacred texts in the Missal; nevertheless, the response was: "Regarding the dispensation, it is left to the judgment of the Bishop, provided he agrees." And in Geneva, Irregularities, of March 20, 1880, (the passage is incomplete).

[*Latin ed. p. 751*]

In the year 751, a dispensation was granted, so that the sacred order of the Presbyterate might be conferred upon Deacon Francis Dufresne, who had almost completely lost the use of his sight, so that he had a rather general and blurred vision: nevertheless, the Most Eminent and Reverend Fathers [of the Congregation] considered the piety of the petitioner and

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the benefit to the Church, and wrote: "Considering the particular circumstances, with the granting of the faculty to celebrate Mass in honor of the Blessed Virgin, and with the obligation of the assistance of another priest or deacon, let it be so, with the approval of the Most Holy [Father]." Also, in Faventina, on the irregular day of February 15, 1879, and also in Maiorica, on the day of May 30, 1891, a dispensation was granted at the discretion and conscience of the Bishop, in favor of a certain cleric, who had been so blind from birth that he could scarcely read in the missal, even with the aid of spectacles. Finally, most recently, in Augustana, on the day of June 17 of the past year, a dispensation was granted to the cleric Ludovico Hoefner, aged 24 years, who was hindered by an irregularity due to a weakness of his visual faculties; and you, the Most Eminent and Reverend Fathers, gave a favorable response: "For the granting of a dispensation from the irregularity, provided that the celebrant celebrates with the assistance of another priest, with the approval of the Most Holy [Father]." Finally, the good of souls and the certain benefit that will result from his promotion to the priesthood for the Church are persuasive, since, as the Bishop said: "the celebration of the Holy Mass, especially on festive days, and the exercise of the sacred ministry could be of great advantage to his native land, where there is only one priest obligated to reside, who is the parish priest." With these things noted, the question was asked as to what response should be given to the petition.

RESOLUTION. The Sacred Congregation, after deliberation on June 23, 1900, decided to respond: At the discretion and conscience of the Bishop, with the approval of the Most Holy [Father].

[*Latin ed. p. 752*]

752 FROM THE SACRED CONGREGATION FOR RITES: Letters granting permission to proceed safely with the ceremonies of the beatification of the Venerable Mary Magdalene Martinengo of Barco. POPE LEO XIII. FOR PERPETUAL REMEMBRANCE. In no age of the Church of Christ has the glory of the Saints been lacking. For it rejoices not only in men, but also in women of outstanding virtue, who, following the footsteps of the Heavenly Bridegroom, have led a life of unwavering constancy through the most arduous path of virtue. It was She who stirred up young girls to martyrdom, especially in the early times, and She brought forth bands of virgins worthy of admiration, who, having abandoned the cares of earthly things, and spurning the allurements and delights of the world, have dedicated themselves entirely to God. These, hidden in Christ, leading a solitary and secluded life, practiced abstinence from all things to an extent beyond belief, and, strong against the weakness of nature, entered into the marriage of the Heavenly Lamb who feeds among the lilies, receiving from Him immortal rewards. Among these shone the Venerable Handmaid of God, Mary Magdalene Martinengo of Barco, who on the fifth day of the

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month of October, in the year of the restored health of 1637, was born in Brixiae, among the ancient and noble family of the Martinengo of Italy, and greatly enhanced the family's honor with the splendor of her virtues. Named Margaret at her Baptism, she blossomed in piety from her earliest years, and her life was marked by innocence. She was accustomed to prefer silence and solitude to childish trifles, to pray for long hours, and, a girl of excellent character, she eagerly sought to alleviate the poverty of the poor through diligence and the study of charity. In her early years, she underwent a great turning point in life; for when she was being carried in a cart by a swiftly flowing stream, she fell, and, after being rolled by the wheel, was thrown into the dust, but, through the present help of God, she escaped unharmed from this great danger. Received into the monasteries of Angelorum and Spiritus Sancti for the purpose of their foundation, she proved to be an example of all virtues to her companions and teachers. There she first vowed the flower of virginity to the Heavenly Bridegroom, and, drawn by the spirit of penance and interior life, she began to consider entering the religious family of the nuns. Therefore, having scorned the vanities of the world,

[*Latin ed. p. 753*]

Having disregarded the advantages of a worldly life, having scorned worldly marriages, and having bravely overcome the difficulties presented by her father and relatives, on the eighth day of September in the year 1706, she fled joyfully to the Brixian monastery of the Capuchin nuns, seeking it as a desired refuge, and there, in the prime of her youth, adorned with the renowned fame and nobility of a virgin, she put on the humble habit of Saint Francis, and girded her loins with a rough cord, and, having assumed the name of Mary Magdalene, she pronounced the solemn vows of religion. And it seemed that she began to strive with eager zeal for the perfection of the religious life. Indeed, humility shone brightly in her, and there was a singular alacrity in obedience, and patience in enduring all hardships, the most meticulous observance of even the smallest rules, and a constant study of prayer, to which she devoted day and night, and in which her soul was often so abundantly filled with the gifts of divine grace that she seemed to be transported beyond the senses. But when recalling the sufferings of our Lord Jesus Christ, she was so deeply affected by the feeling of pain, and so inflamed by the flame of love, that she was often on the verge of swooning. Moreover, she subjected her body to constant austerity, for she had dedicated the son of purity to God from her earliest years, and she often kept herself bound with a rough cord of penance, and she restrained her innocent body with fasts, scourges, horsehair, and other exquisite torments. Having performed all virtues heroically, she left examples of penance more admirable than imitable. She was also fierce with iron and fire against her flesh: often she pierced her limbs with iron

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needles and cauterized the bloody wounds with burning sulfur. She spared no labors in the monastery, nor did she disdain any of the most humble tasks: she preferred dirtier clothes, a narrower cell, and a bed more like a straw pallet than a mattress. But since she had won the admiration of all through the excellence of her virtues, her sisters called her to higher offices. First, she was appointed to instruct and guide the young girls who were beginning their religious life, and she confirmed them in their path to perfection by her example, commending them with faith and teaching. Then she undertook the office of Rota Custos, and in this office, both within and outside the monastery, she saved many souls with salutary admonitions, and she filled the entire city with the fame of her sanctity, so that countless faithful flocked to the monastery gates to hear the voice of the Venerable handmaid of God. Finally, with full suffrage, she was elected Abbess, a weighty and important office, Act, Vol. XXXII, p. 3584.

[*Latin ed. p. 754*]

754. The Sacred Congregation for the Rites diligently fulfilled its duty, so that even the nuns themselves testified that the governance of that institution was more divine than human. After enduring increasing infirmities for three years, which she bore with a cheerful and steadfast spirit, desiring to depart in order to ascend to the nuptials of the heavenly Lamb, for which she yearned so greatly, she peacefully breathed her last in Brixiae, the city where she had been born fifty years earlier, on the sixth day before August in the year 1737, having completed her life more through labors and penances than through old age. The opinion that the Venerable Handmaid of God, Mary Magdalene Martinengo of Barco, was endowed with sanctity, was further strengthened after her death, especially with the increasing reports of miracles which were said to have occurred through her intercession. These remarkable testimonies, illuminating the divine providence that surrounded her, led many to experience present help from the tomb of Mary Magdalene, and they encouraged the Discalced Carmelites, as well as the clergy and people of Brixiae, to promote the cause of Mary Magdalene Martinengo before the Congregation of Sacred Rites. After legal investigations were properly conducted, Pope Pius VI, Our Predecessor, solemnly declared by decree on the third day before May in the year 1778 that the virtues of Mary Magdalene had reached a heroic degree. Subsequently, an investigation into the miracles that were said to have been miraculously granted through her intercession was initiated, and Our Predecessor, Pope Pius VI, solemnly declared by decree dated the fifth day before March in the year 1793 that one miracle had occurred; and We, by a decree dated the fifth day before July in the year 1898, likewise declared with supreme authority that another miracle had occurred through the intercession of the Venerable Handmaid of God. Since a judgment had already been rendered regarding her virtues and the two miracles, it remained to be de-

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termined whether the same Venerable Handmaid of God could safely be reckoned among the blessed in heaven. This was presented by Our beloved son, Caietan, Prefect of the Sacred Congregation, Cardinal Aloisi Masella, in a general meeting held before Us in the Vatican buildings on the third day before December in the year 1898, and all the Cardinals who were prefects of the Sacred Rites, as well as those present as consulting fathers, unanimously responded affirmatively. We, however, considered it necessary to offer prayers to God, so that We might obtain heavenly assistance in rendering a judgment on this important matter, and on the Sunday after the Seventieth Sunday.

[*Latin ed. p. 755*]

From the records of the preceding year, concerning the Eucharistic Sacrifice, with the Cardinals Camillo Mazzella, Bishop of Praeneste, Prefect of the Congregation of Sacred Rites, and the aforementioned Caietano Aloisi Masella, relator, and also the Reverend Father John Baptist Lugari, Promoter of the Holy Faith, we have decreed that it is safe to proceed with the solemn Beatification of the Venerable Handmaid of God, Mary Magdalene Martinengo of Barca.

Since these things are so, moved by the prayers of the entire Order of Capuchin Franciscans, by Our Apostolic authority in these letters, We grant the following: that the Venerable Handmaid of God, Mary Magdalene Martinengo of Barca, a professed nun of the Blessed Order of Capuchins, may henceforth be called Blessed, and that her body and, if available, her relics, may be presented for public veneration in solemn celebrations, and that images of her may be depicted.

Furthermore, by the same Apostolic authority, We grant that an Office be recited and a Mass be celebrated annually in her honor, with prayers specifically approved by Us. We grant that such Masses and the recitation of the Office may be performed solely in the Diocese of Brescia and in all temples and oratories used by the Order of Capuchin Franciscans throughout the world, by all the faithful, both secular and regular, who are bound to recite the canonical hours.

Finally, We grant that the solemnities of the Beatification of the Venerable Handmaid of God, Mary Magdalene Martinengo of Barca, be celebrated in the aforementioned diocese and temples with a Mass and Office of double major rank, which We command to be performed on days designated by the Ordinary within one year after the same solemnities have been celebrated in the Patriarchal Basilica of the Vatican.

Notwithstanding any Apostolic Constitutions and Ordinances, and decrees concerning the cult, and any other contrary provisions whatsoever.

We decree that copies of these letters, even printed ones, shall have the same force and effect in all discussions, even judicial ones, as if they were

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the original, provided that they are signed by the hand of the Secretary of the aforementioned Congregation and sealed with the seal of the Prefect.

Given at Rome, at St. Peter's, under the Fisherman's Ring, on the eighteenth day of April, in the year 1900, in the twenty-third year of Our Pontificate.

[Signature]

L. S. Alois. Card. Macchi.

[*Latin ed. p. 756*]

756 FROM *S. C. RITUUM MONITUM* concerning the Altar Cross, issued, with the authorization of the Sacred Congregation, by the editor of the *Liturgicarum Ephemeridum*. The Sacred Congregation grants us the authority to remind pastors and other rectors of churches to consider the matter of the altar cross. For, a certain unsuitable practice has begun to appear in the temples of God, even in the city, whereby, when the Sacrifice of the Cross is celebrated, scarcely a small cross (and the reader will excuse this manner of expression) is placed upon the altar during Mass, which is entirely contrary to the law and cannot be tolerated. Indeed: the rubric of the Missal requires (Title XX) that a cross be placed upon the altar in the center: so that it may be clearly visible to the celebrant and the surrounding people. As the *Caeremoniale Episcoporum* declares, it commands that the cross itself should be taller than the candlesticks, with the image of the most holy Crucifix (Book I, Chapter XII, number 11). Furthermore, the Sacred Ritual Tribunal, explaining the matter with greater clarity, states: (June 16, 1663, number 1270). A small cross, even if it has the image of the Crucifix, is not sufficient, but another cross must be placed in the center of the candlesticks. And not only that, but it also responds with a more serious reason, stating: "The abuse of placing a small cross, scarcely visible, either above the tabernacle or above some smaller plate of tin in the center of the altar, in place of the cross that should be placed among the candlesticks, as the rubric prescribes, is to be condemned; and where it has prevailed, the Ordinary of the place shall provide for remedies in law and in fact." And it should be noted that if, for some reason, the cross placed among the candlesticks needs to be removed, another suitable cross must be placed in its place during the celebration, but it must be visible to both the celebrant and the people, (September 17, 1822, number 2621). And it must be noted that the aforementioned decree was approved by Pope Pius VII, who ordered that it be published and made of public law, strictly instructing the Ordinaries of the places to urge its observance in every way. The Supreme Pontiff Benedict XIV, adhering to the Sacred Congregation, also addresses all the Bishops of the Church in his Constitution *Accepimus*, dated July 16, 1746, which establishes the law, saying: "We command you that, under no circumstances, you allow (nor in the churches of Regular Canons) the

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divine service to be performed... unless..."

[*Latin ed. p. 757*]

From the Sacred Ritual, 757: "The Crucifix should be placed among the candlesticks in such a manner that the priest celebrating and the people attending the sacrifice may easily and conveniently be able to contemplate the same Crucifix; which cannot occur if only a small cross, affixed to a smaller tablet, is presented to the faithful." Therefore, this matter is not of little importance, but of grave consequence, so that some bishops have rightly judged it necessary to determine the dimensions of the aforementioned cross. Hence, Foppianus concludes: "Therefore, since the matter is of such importance and is placed under a serious precept, the cross with the image of the Crucified must be placed openly and visibly in the middle of the altar, and of such magnitude that it immediately comes into view of the celebrant and the people." Indeed, the custom has prevailed of placing smaller painted tablets above the altar, and for those, the precept of the elevated cross in the middle of the candlesticks is lessened; but devotion should not substitute itself for the observance of the law. True devotion is that which leads to the observance of the laws; that which hinders the law is false and to be condemned. Therefore, in the name and with the authority of the Sacred Roman Congregation, we earnestly exhort all those to whom this concerns to observe this law, and we warn their consciences, so that if they neglect it, they may be held accountable.

From the SECRETARIA BREVIUM, a brief granting an indulgence of three hundred days to those who recite the prayer at the end, in honor of the Most Holy Mary, Help of Christians.

LEO XIII, POPE. FOR THE EVERLASTING MEMORY.

Having received, with benevolent approval, the prayers presented to Us by our beloved son, Cesare Cagherò, general procurator of the Salesian Congregation, and confident in the mercy of Almighty God and in the authority of the Apostles Peter and Paul, We grant to all and each of the faithful, of both sexes, living everywhere on earth, who, with at least a contrite heart, in any language, provided the translation is faithful, pray...

[*Latin ed. p. 758*]

758 FROM THE SECRETARY'S OFFICE: We grant an Indulgence, dedicated to Mary, Help of Christians, which begins in the vernacular language with the words: "O most holy and immaculate Virgin Mary," and ends with these words: "we may go to make our prayers before you in the beautiful paradise. So be it." According to the model approved by the Holy Congregation of Rites, which We order to be kept in the archives of the Secretary's Office, We hereby remit three hundred days from the number

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of days of penance, in the usual form of the Church, and We grant to those who desire it, the permission to satisfy, through this partial Indulgence, the imperfections of their life and, if they wish, the canonical penances. However, We decree that an authentic copy of these letters be presented (which, if it is not done, We wish to be considered as null and void) to the Secretary of the Congregation for Indulgences and Sacred Relics, according to the decree issued by that same Congregation on January 19, 1756, and approved by Our Predecessor, Pope Benedict XIV, on the 28th day of that month; and that the same faith be given to copies or transcripts of these letters, even if printed, which are signed by a public Notary and sealed with the seal of a person holding an ecclesiastical office, as would be given to the original documents if they were presented or shown. Notwithstanding any contrary provisions. These present decrees are valid for all times, to come, with the exception of Our Constitution regarding the suspension of Indulgences during the year of the universal Jubilee. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 10th of March, 1900, in the twenty-third year of Our Pontificate. For the Lord Cardinal MACCHI, the Substitute. NICOLAUS MARINI. A copy of these Apostolic Letters has been presented to the Secretary of the Holy Congregation for Indulgences and Sacred Relics. In witness whereof. Given at Rome, from the same Secretary, on the 17th of March, 1900. Ios. M. Canonicus COSELLI, the Substitute. PRAYER TO MARY, HELP OF CHRISTIANS: Most holy and immaculate Virgin Mary, our most tender Mother and powerful Help of Christians, we consecrate ourselves entirely to your sweet love and to your holy service.

[*Latin ed. p. 759*]

From the Secretary of Briefs, 759. We dedicate our mind with its thoughts, our heart with its affections, our body with its feelings, and with all our strength, and we promise to always strive for the greater glory of God and the salvation of souls. We beseech you, O incomparable Virgin, who have always been the Helper of the Christian people, deign to continue to show yourself as such, especially in these days. Humiliate the enemies of our holy Religion and render vain their wicked intentions. Illuminate and strengthen the Bishops and Priests, and keep them always united and obedient to the Pope, the infallible Master; preserve the heedless youth from irreligion and vice; promote holy vocations and increase the number of the Sacred Ministers, so that through them the kingdom of Jesus Christ may be preserved among us and extended to the furthest limits of the earth. We also pray you, O sweetest Mother, that you may always direct your merciful gaze upon the heedless youth exposed to so many dangers, and upon the poor sinners and the dying; be for all, O Mary, a sweet hope, Mother of Mercy, and Gate of Heaven. But also, we implore you, O great Mother of God. Teach us to imitate your virtues in ourselves, especially angelic modesty, profound humility, and ardent charity, so that, as far

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as is possible with our conduct, our words, and our example, we may represent the living Jesus Christ, your blessed Son, in the midst of the world, and make you known and loved; and through this means, we may succeed in saving many souls. Furthermore, O Mary, Helper of Christians, may we all be gathered under your mantle as Mother; may it be that in temptations we invoke you promptly with confidence; may it be that the thought of you, so good, so lovable, so dear, the memory of the love you bear for your devoted, may be such a comfort that it makes us victorious against the enemies of our souls, in life and in death, so that we may go to make a crown for you in the beautiful Paradise. So be it.

[*Latin ed. p. 760*]

760 DECREE of the Most Holy Congregation of the Holy Roman and Universal Inquisition, concerning the faculty of hearing the confessions of faithful traveling by sea. In the General Congregation of the Holy Roman and Universal Inquisition held on the 4th of April, 1900, when the matter had been discussed concerning the faculty of priests, who are undertaking a journey abroad, to hear the sacramental confessions of the faithful accompanying them on the same journey, the Most Eminent and Reverend Lords Cardinals, Inquisitors General throughout the Christian Republic, in order to remove all future occasion for doubt and anxiety regarding this matter, decreed and declared: That priests, whoever they may be, undertaking a journey abroad, provided that they have the faculty to hear confessions from their own Ordinary, can, during the entire voyage, hear the confessions of the faithful traveling with them on the ship, even if, during the course of the journey, they may pass through, or even remain for some time, in places subject to the jurisdiction of different Ordinaries. This resolution of the Fathers was graciously approved and confirmed by the Most Holy Lord Pope Leo, of blessed memory, XIII, through faculties imparted to the Most Eminent Cardinal, Secretary of the Holy Office. I. CAN. MANCINI, Notary of the Holy Roman and Universal Inquisition.

[*Latin ed. p. 761*]

761 SUMMARY OF THE ACTS CONTAINED IN THIS VOLUME XXXII: LETTERS AND ACTS. A letter from Pope Leo XIII, addressed to the Bishop of Bayonne, Wilhelmina, concerning the Mass of the Holy Father in Holland, was sent to the King. page. Regarding the dispensation of marriage; a grace of dispensation is granted concerning a marriage that has been consummated and one that has not. 15. Encyclical Letter of the Most Holy Father Leo XIII to the Archbishops, Bishops, and clergy of France concerning the nullity of marriage; the sentence is confirmed. 193. Letter of the Most Holy Father Leo XIII to the Archbishops and Bishops of Brazil concerning the suspension and indulgences pertaining to the approaching Jubilee year of the nineteenth century. 214. Constitution of the Most Holy

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Father Leo XIII by which indulgences are granted to those who offer alms, to the tertiaries, etc., for the Jubilee year. 257. Apostolic Letters, by which the archiepiscopal curia declares a marriage in Policastro to be invalid; the rights of the presbyters of the Church of Lauria, who are in need of dispensation, are confirmed; dispensation is granted for marriage that has been consummated, but not consummated. 79. Regarding the Vallisoletan distribution, faculties are granted for the Jubilee year to the Canon, the Magistral, and others, for the performance of the office of preaching in the Cathedral Church, in order to obtain distributions from the dispensation of Saint [Andrew]. 260. Regarding a question concerning the irregularity of the Canon and Capellans of the Chapter of Andrien concerning certain rights; a dispensation is granted to five canons for the performance of their duties; regarding irregularities; regarding doubts concerning the faculty of dispensing from matrimonial impediments in Bononia. 102. Regarding the removal of an image; Augustana. 102.

[*Latin ed. p. 762*]

SUMMA ACTORUM 762: It is inquired whether the jubilation requested from public veneration, namely the image of the Blessed Virgin Mary, Queen of the Rosary, has been lawfully removed; Forolivien responds concerning the nullity of marriage, and the non-consummation of the same, and concerning the rights thereof; Sorana supports this regarding three points concerning the chaplaincy. It is asked whether a donation to the two curias is to be approved; a dispensation is granted to the cleric concerning two offerings made in the parish church of Melevitana, namely 302 offerings in processions preceding the altar; the question concerns the precedence among members of various pious unions. Parisien, after a long discussion and various votes of the consultors, declares that there is no nullity of marriage; Burgen, who had condemned the Church of Salernitana, affirms that the rights of the curia are not impaired; the question is whether a marriage is consummated. 513 marriages; 274 marriages are declared null due to the infirmity of the woman; Policastren, a marriage is declared null due to the woman's lack of consent. Sorana declares that a marriage is not null due to the defect of consent from one of the parties, nor because of a perfect act of copulation; the sentence of the woman, who, lacking valid reasons, has not consulted the Sacred Congregation, is not to be considered in this matter; Treviren. concerning the competence of the marriage, it is inquired whether this fact invalidates the marriage, and whether the betrothal is resolved; 174 marriages; 420 betrothals. Isolana, due to a defect in Melevitana, the marriage is declared null; the Bishop's intention is to deprive the rector of his office, and to determine the quality of his service as a layman; for thirty years, this controversy has existed between two parish priests of Savonen. It is inquired whether the Sodalitium of St. Nicholas is to proceed for sacred

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processions on the Feast of Corpus Christi, etc. 529. Sandomirien: a dispensation for marriage; a marriage is granted, but not consummated. 577. Mechlinien: a dispensation for marriage; a marriage is granted, but not consummated. Augustana: concerning the will of the testator, it is inquired among the descendants of the founder, whether they have the right to enjoy this benefit. Ortonen: the primicerius requests that this dignity be granted to him by the Chapter without concurrence; this option is subject to.

[*Latin ed. p. 763*]

SUMMARY OF ACTIONS before the revenues of this canonry were increased by the industry of the canon, formerly invested...

614 dispensation from irregularity; a cleric is dispensed from, who, due to illness, cannot properly genuflect.

617 of marriage; a dispensation is granted concerning a marriage, already celebrated, but not consummated.

641 of the nullity of marriage; the sentence of the judge of Forlì is confirmed, by which it was declared that there was no marriage due to the wife's impotence.

658 of annual payments; it is inquired among those interested in a legacy, what is the testator's true will.

670 of patronage; it is inquired whether the same procedure should be followed regarding passive patronage, after the first-called heirs have disappeared, for families descended from a single heir.

705 of residence; it is considered whether the fruits, from which the ailing canon had been deprived by the Chapter, should be restored to him.

717 of the nullity of marriage; a valid marriage, which was sought to be declared null, is renounced, due to fear instilled.

727 of irregularity; a dispensation is granted concerning an irregularity due to a defect in the left leg.

746 765 a dispensation is granted from irregularity to a young man due to a weakness of visual ability.

Eporedia, Jeron, Naples, Forlì, January, Mutilana, Burgen, Bordeaux, Basel, and Casenate.

FROM THE SACRED CONGREGATION OF THE ROMAN INQUISITION:

60 Whether all habitual faculties, together with those granted for a specific number of cases, pass to their successors in the Ordinary Sees.

62 Whether the Ordinaries of Sees can grant dispensations from impediments to marriage to those who have lived in concubinage, and then separated.

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63 Whether an ordination is valid, in which the first and second imposition of hands, along with the sacramental words, are omitted, but all else is completed before the delivery of the instruments.

64 Whether it is permitted for Superiors in Rome to hear the sacramental confessions of their subjects.

128 It is inquired whether an ordination to the priesthood is valid, in which only the first imposition of hands was present; it is doubted whether a Bishop, even temporarily...

Dubia; Doubt; Article Doubt; Decretum Doubt; Doubt; Mor-

[*Latin ed. p. 764*]

SUMMA ACTORUM 764: Tunc, extendit manus super eos qui ordinandi sunt...

188. Dubium: Num licet medicis interesse disputationibus de suggestiones ipnoticis?

189. Dubium: Num potest Mons pietatis dare in usuram mensalem duarum libellarum pro quolibet centum?

190. Dubium: Num validum est matrimonium celebratum coram parocho non proprio per delegationem parochi proprii, quando alter ex sponsis, a proprio designatis, ab alio fuerit repraesentans?

191. Dubium: Num licet pro ieiunio aliisque obligationibus ecclesiasticis sequi tempus medium Zonarium, quod signant tantum horologia viarum ferrearum et minime vero alia publica horologia?

251. Dubium: Num decretum S. Officii diei 15 Iulii 1899, quo superiores vetantur excipere confessiones suorum subditorum, derogaverit apostolicis constitutionibus, quae regulares Ordines respiciunt?

253. Dubium: Num margarina (butyrum arte confectum) adhiberi possit per modum cibi aut condimenti, quoties permittitur usus butyri?

254. Dubium: Num Indi-Goaijri baptizari possint?

254. Dubium: Num licet adesse disputationibus medicorum et experimentis quoad disputationes ipnoticas?

319. Dubium: Quid de Episcopo, qui inadvertenter pueros aliquos confirmavit oleo cathecumenorum?

447. Dubium: An dispensat possit etiam ab impedimentis clandestinitatis, vi facultatis Episcopis concessae, dispensationis in articulo mortis ab impedimentis dirimentibus in matrimoniis concubinariorum?

500. Dubium: An et quomodo liceat aut oporteat curare operationem caesaream super mulierem certe vita iuncta?

501. Dubium: An attingat quoque minister generalem Ordinum religiosorum decretum S. Officii declarans, transire ad successores, facultates ad Ordinarios concessas?

503. Dubium: An Congregationes Religiosae votorum simplicium subi-

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iciuntur decreto prohibenti ne superiores excipiant confessiones propriorum subditorum?

504. Dubium: Quid sit dicendum de Ordinatione presbyteri, in qua defuit hostia actu traditionis instrumentorum?

556. Dubium quoad ordinationem presbyteralem, in qua calix non fuit tactus et patena sublevata fuit super calicem ipsum, dum formula recitaretur?

557. Dubium: An S. Sacrificium recitari valeat super altaribus consecratis saeculis transactis, absque sanctorum reliquiis?

558. Dubium: An sanari possit matrimonium christianum infidelis ad?

[*Latin ed. p. 765*]

SUMMARY OF ACTIONS of the converted, who, invoking the Pauline privilege, are either servants or infidels. The daughter of Mary Claus, 559, among heretics, can, in Catholic institutions for women, regarding... Masses 560 celebrated with hosts, of which the flour is either doubtful; it can be doubted whether they can be validly received in the canonization of the Cusentina, or the Romana omitted the interpretation of the woman, doubtful; 765 of God Bernard... 127 of confirmation, was presented as a servant of God Mark Criado, of the Order of the Most Holy Trinity, or Aeduen... 249 of the canonization of the servant of God Anthony Receiver. 319 Emi Letters from the Prefect regarding the union of a concubine, then the devotion to the Most Holy Heart... in which, before the civil marriage, the effect of impotence was received, 639, to receive the abjuration of heretics, who are converted to the greater Church, with the added faculty of the faithful, in a minor quality, by the Prefect; the cult of the Most Holy Heart of Jesus is amplified, 51. The canonization of Anthony Mary Claret. The servant of God Michael Goricoïts. Baptista de la. 341. The beatification of God of Burdigala: Joan, 343, the venerable of Leston, 489, can proceed to the solemn beatification of the venerable Joan of Salle: can proceed to the solemn canonization. 55. The canonization indulgences, of the Pagans, of Burdigala, the servant of John, dedicated to the beatification of the servant of God Rothomagen, in 341, the reading of the Breviary is inserted, for the beatification of the servants of Nuceria, Baionen, 338, 339, the Archbasilica of the Most Holy Savior. Mary Aloisia Maurizi. Of God Alexander VI, of Rome. Of God Caesar Sportelli, of Brixia. Various doubts. The addition of the office and Masses of the servant of God, from the Holy Congregation of the Roman Orbis, of St. Bede, the Venerable, regarding the confessions of the living, Letters and rites, 697, regarding Bris, 1899, of the city, its Decree, extends to the union of the Decretum sam media nocte diei 31 Decem-Miraglia, excommunicated, 335, the indulgence for celebrating Masses, the faculty of the priest, Paul, of Jesus, 126, of Lestonnac, Augustana, 491, the beatification of the venerable servant of God Mary Crescentia Höss,

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Tunquinen, 493, the beatification or the...

[*Latin ed. p. 766*]

SUMMARY OF ACTS 766 concerning the declaration of the martyrdom of the servants of God, Ignatius Delgado, Apostolic Vicar of Tunquin, and others; concerning the beatification in China; or, as it is also called, the Spoletan Indulgence, granted for the most safe devotion of the Sacred Heart, no. 563, so that it may proceed to the solemn canonization of the aforementioned Blessed in China, Tunquin; concerning the agonies of the servants of God, Mary Magdalene, no. 633, of the Order of the Minor Brethren of St. Francis; doubts proposed to the Editor of the Order of the same; Decree by which it is declared that it is safe to proceed to the granting of honors to the two martyrs, Dionysius at Nativity, and Redemptus at the Cross, and that it is safe to proceed to the canonization of the Blessed Rita of Nursia, concerning the scapular of the Sacred Heart of Jesus, no. 497, of the aforementioned Sacred Heart of Jesus, no. 630, concerning the declaration of the martyrdom of the servant of God, Francis Clet, concerning the scapular for the servant of God, John at the Cross, no. 689, by which letters are granted for the safe devotion of Gabriel Taurin Dufresse and others, and for the safe devotion of the Blessed Virgin Mary Magdalene of Barco, no. 752, it is permitted to proceed to the beatification of the servants of God, Father Dionysius at Nativity, etc.; Augustana, it is granted that it is safe to proceed to the beatification of the Blessed Hosea of Pictavien, Sister Mary of the Sacrament, no. 572, concerning the beatification of the servants of God, Andrea Hubert Fournet, no. 573, concerning the beatification of the servants of God, Father Dionysius at Nativity and Brother Redemptus at the Cross, concerning the declaration of the martyrdom of John at Triora, of Vicenza, of Vicenza, no. 756.

FROM THE SECRETARY'S OFFICE, no. 570, concerning the beatification of the servants of God, approved by the Moderator of the Liturgical Ephemerides, concerning the beatification of the servant of God, Mary Crescentia, of Naples, approved by the Holy Roman Congregation, concerning doubts regarding Masses in which an indulgence of three hundred days is granted for reciting the prayer in the aforementioned Breve at the foot of the altar, in honor of the Most Holy Mary Auxiliatrix, no. 757.

FROM THE HOLY CONGREGATION OF EPISCOPAL AFFAIRS, Verulana rights; and REGISTRY, no. 574, concerning the right of transferring, associating, and burying bodies within the city; the Religious houses are permitted to dwell temporarily, by the concession of Pope Pius X, no. 112.

[*Latin ed. p. 767*]

767 SUMMARY OF ACTIONS, or Fodiana pension; The matter concerns taxes imposed by the civil government of Nuceria on 118 confraternities of Pagans; the matter concerns precedence between members of the Third Or-

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der of Carmelites and members of the Third Order of Minorites, regarding 315 rights of credit; Ruremunden. The mission to the Indies concerning Indulgences of the Most Holy Rosary, 226; Indulgences of the Most Holy Rosary, 228, exhibiting the rules or norms for discerning true Indulgences from apocryphal ones; Commentary on 241 the aforementioned rules; 244. The question is whether a monastery is obligated to restore a large sum of money to another monastery, founded by the same pious person. Regarding Episcopal instructions for dioceses, the Apostolic Penitentiary: 481 Concerning Congregations; 487 Concerning the suspension of certain faculties, 320; Excerpts from the Constitution on Credit of Pope Benedict XIV, which begins with "Seminarii vocatis," and from another, whose beginning is "reddendam vim pecuniae," concerning the obligation of a certain merchant to an alumnus of the Seminary, regarding the suspension of the faculties of the aforementioned Seminary... 619 Concerning Jubilees granted on past occasions through the confessors, and the modifications thereof ordered by the Most Holy Pope Leo XIII. The Holy Congregation of Indulgences: 328 Concerning doubts regarding the extension of the Psalm "Exaudiat" to secular tertiaries of St. Francis of Assisi. An Indult by which 182 the time for requesting patent letters from the aforementioned Order is extended to one year. Concerning the confraternity of the Most Holy Rosary in Augustana: Doubts regarding various fraternities named by the Most Holy See; Letters concerning the granting of special faculties to parish priests; Doubts regarding translation; Declaration concerning the suspension of the Bull; 507 Concerning the Bull of the Cross; 508. These are extended to religious of simple vows; 508. Declaration, whereby the Most Eminent Vicar of Rome grants special faculties to each of them, concerning the certainties of the transfer of faculties; Concerning the granting of Indulgences; By which Ordinaries relinquish their faculties to the Bishops. Concerning Declarations: Declaration of the Most Eminent Prefect of the Holy Congregation of Indulgences to Municipalities, 184; Concerning the Rosary, 505; A new confessori for the year, 508.

[*Latin ed. p. 768*]

768 The *SUMMA ACTORUM* cannot begin until the ecclesiastical day has begun; a new visitation of the four Basilicas cannot commence on the same day, the previous one having already been completed naturally. 638

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IMPRIMATUR

Fr. Albertus Lepidi, Order of Preachers, Magister.

IMPRIMATUR

Iosephus Ceppetelli, Archbishop of Myren, Vice-Chancellor.

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